

ENGLAND'S INDEPENDENCY

Upon the

Papal Power

Historically and Judicially Stated,

By

Sr. JOHN DAVIS, Attorney Generall in *Ireland*,

And by

Sr. EDWARD COKE; Lord Chief Justice in *England*,

In Two REPORTS,

Selected from their greater Volumes ;

For the Convincing of our *English Romanists*, and

Confirming of those who are yet unperturbed
to the Court or Church of *ROME*.

With a Preface written by

Sir JOHN PETTUS, Knight.

L O N D O N,

Printed by C. Fletcher, J. Streater, and D. Twyford, Assigns
of Richard Atkins and Edward Atkins, Elquires :

And are to be sold by severall Book-sellers in Fleetstreet
and Holborn. MDCLXXIV.

coll. 93

12/17 '19

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To the Right Honourable,

JAMES

Earle of

SUFFOLK,

Lord Lieutenant of that County, &c.

MY LORD,

I Have the honour of being one of your Deputies in the County of Suffolk, which I hope will admit me to the freedome of placing your Lordship in the Front of Two Reports cul'd out from the many other Reports of two as Learned persons in our Laws as that Age did afford.

A 2

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I have perswaded the Stationer to reprint them, as fit at this time to be generally perus'd. For Sr. John Davis, in his Report of Lalor's Case, gives an Historicall Account of the Pope's Invasions upon us from Edward the Confessor's time in matters Civil; and the Lord Chief Justice Coke gives also a full and clear Account of the Pope's Intrusions upon us in matters Ecclesiasticall. Neither of them do meddle with the Cavills of Religion between us and the Papal Power, but what concerns their State and ours, and that deduced from Antiquity; how we ought to pay our single Obedience both to Church and State, (as our Predecessors have done, or endeavour'd to doe, for many Ages, to their respective Kings.) And though there have been many Invasions or Intrusions upon us by the Power and Policy of the Pope and his Agents, yet we were alwaies struggling to get out: Sometimes we mastered them, and sometimes we were mastered by them; according to the Resolution or Weakness of those our former Kings who were to maintain their inherent Interests. And however some Papal Pretences seem to be, yet we may clearly see (when they got the upper hand) what

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what Subjection they intended to impose upon us, as they did on King John; and they nick'd the time when he was imbroyl'd and even totally immersed in the Distempers of his unruly Subjects, and enraged Forreiners: and then, by the opportunity of those Factions and Forreiners they did subjugate this Kingdome to his Principality in Italy, and made it its Vassall more then ever any Emperour of Rome did pretend to, or could accomplissh. And though after King John, there were various Contests by our successive Kings, yet none did so effectually rout the Papal Interest here as Henry the VIII. for which the Romanists do rip up all his Vices, to make him as odious to the world as possible: and among other things they affirm, that He was the man that rebell'd from their Church. (Whenas their Historie and ours tell us, and them, that he lived and died a Roman Catholick.) And they farther say, that it was He that brought in our Religion; which they now call Heresie, and is but a Reformation of theirs: and even that Reformation was begun and prosecuted (though but in parcells) by former Ages, but not establisht till Henry the VIII. had first broke

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broke their Civil Interest here, and then it went on with ease by King Henry's Successors.

But by their Railings on Henry the VIII. Luther, Calvin, and I know not whom, (whose Doctrines we do not altogether follow) the Papal Agents do most wonderfully deceive the unfixt and wavering minds of men, who do not know the true Foundation of our Church and State here in England, clearly and through all Antiquity independent upon any Church or State but its own, or on any person but the Monarch thereof; as is most fully set forth in these excellent Reports, wherein your Lordship and others by an hour's reading may see what is our Right, and how it hath been maintain'd, and lost, and regain'd by that most resolute Prince, then owning the whole Body of the Papal Doctrine, but not the Pope's Superiority or power to establish any thing in these Kingdomes.

It is true, this Prince had Discontents, and was crost in his Designs, which it may be did either provoke him, or upon this it is likely he did

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did take occasion to pick a quarrel, that he might the more speciously accomplish what his Predecessours could not effect. However, God doth often produce good Events by such as we call evill Mediums: as the Beams of the Sun make their way through Darknesse and Vapours; which now again begin to spread over our heads like thick Clouds contracted by long Exhalations, ready to break and send forth Lightning, Thunder and Storms upon this Nation. And thus I apprehend their contraction.

When Henry the VIII. had thus restor'd us to our Liberties and ancient Rights, and disbanded the Papall Power and Interest here, it was time for the Pope to contrive some other Stratagems; and therefore what he could not doe by the power of Bulls, &c. he tries to effect by a long and continued Art. And first, he infuseth into his Catholick King of Spain, how fit a person he was to be Universal Monarch of Christendome: which the King of Spain's Ambition readilie embraced, (the whole Design whereof may be read in Campanella the Jesuite, in his Discourse of the Spanish

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nish Monarchy.) About the same time the Pope also inveigles his most Christian King, Henry the IV. of France ; telling him also how fit a person he was to be Univerſal Moderator of Chriſtendome : which Bait this King's Ambition did alſo readily embrace, (the whole Modell and Platform where ſ is alſo ſet down by the Biſhop of Rhodes in his Hiſtory of the ſaid Henry the IV.) And in all this time, while both theſe Kings were driving on theſe Deſigns, it is obſervable (by the Confeſſion of thoſe Hiſtorians) that neither of them were privy to each other's Intentions, the buſineſs was ſo cunningly managed by the Pope, whoſe great Art it was to keep their Deſigns ſecret, and put both their Wheels in motion at once ; yet to keep his Spoak in that Wheel which turned moſt to his advantage.

In both theſe cited Books (of Rhodes and Campanella) your Lordſhip will find that their chief aims and directions were to weaken the Engliſh : and therein they ſay in theſe words, That there was no better way then by cauſing Diviſions and Diſſenſions among the Engliſh, and by continuall keeping up the

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the same; and that as for their Religion, it could not be easily rooted out unless there were some certain Schools erected in *Flan-*
ders, &c. by the Scholars whereof there should be scattered abroad the seeds for Divisions in the Natural and Theologicall Sciences, which would distract and discompose their opinions and judgments: and that the *English*, being of a nature still desirous of Novelties and Changes, are easily wrought over to any thing.

Now that this hath been put in practice I think is obvious to every man; and as clear, that whilst all Christendom are in Arms and Confusions, onely the Pope sits quiet, and smiles to see what work he makes among us, resolving (if not prevented) to tire every man out of his Religion that shall withdraw, not onely a total, but even the least part of Obedience to his Chair.

And thus many poor souls are captivated, (especially those of our Nation, for whom this is intended) some being perswaded to acknowledge the Doctrines of the Church of Rome,
a but

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but not the Power of the Court of Rome ; and when they are plausibly got into the first, they do not consider how insensibly and inevitably they are ensnar'd into the other. For certainly the distinction of the Church and Court of Rome is so ridiculous, that it is a mere Trap for weak, unknowing and unresolved persons : for surely the Pope will never be perswaded to resign his Temporalties to those Princes from whom his Predecessors usurpt them, to take upon him meerly the duty of the Church. So that when one of them perswades you to turn to the Church of Rome, it is but to make you to turn or be subject to the Court of Rome, (and its Cardinalls, who are but a Combination of Temporall Princes) and to all its temporall Impositions, to maintain such Princes under the title of the Pope, and shrowded under the Canopy of Ecclesiasticks and Piety. The truth is, the Questions about Religion are purposely rais'd and infus'd to intoxicate other mens brains : for the Court of Rome do but laugh at the things call'd Merit, Idolatry, Supererogation, &c. whilst many of their zealous Agents here (I perswade my self out of pure Piety) are ready

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dy to die upon the spot in the defence of those Tenents; whereas, poor souls, they might see (if they would) that that Court is onely to imploy them under the shrowds of Piety to bring in Grist to the Mill by money and usurping other mens territories; so as the ancient and important question, why we should not give unto the King the things that are the King's, is quite laid aside, and the question is almost now, why we should not give to the Pope the things that are the King's, and subjugate this Kingdome to their Principalities. And thus by deceiving even their own Agents with a pretence of driving on Piety, (which is onely Sovereignty) even many of the Papists themselves are innocently betray'd, and so are become betrayers of others.

But to return to the Historicall part. After Henry the VIII. had cast off the Dominion of the Papal Court, Edward the VI. succeeded, in whose Minority his Councell were so wise, (though many of them of the Roman Church) that the resolution of

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Henry the VIII. was re-assum'd in casting off the Pope's Power, and a Foundation laid for establishing a Church here, by a Form of Discipline and Doctrine free from the Power and Errours of the Papal Court and Church: and (though some Interruption was given by Queen Mary, yet) what was wanting by King Edward's short Reign, was compleated by Queen Elizabeth, who in her very first year, by the full Consent of the Lords and Commons in Parliament, by example of many of her Predecessors, did enact, That no forrein Potentate or person should exercise any power within any of her Dominions; and all Ecclesiasticall Jurisdiction should be annext to the Crown. And in the 5. year of her Reign in particular it was enacted, That whoever shall acknowledge any Jurisdiction of the Bishop or See of Rome within any of her Dominions should be guilty of a *Præmunire*, they, and their accessaries.

And that the Principles of the Doctrine and Discipline of our Reformed Church might the better be known, the frame of it made

Dedicatory.

made in Edward the VI. his time, was confirmed with some few alterations, and 39 Articles established as a Foundation and Standard of our Doctrine and Discipline, distinct from that of the Court, as also reformed from that of the Church, of Rome.

But since her time even to this, whilst we have thought our selves secure from the Papal Authority, their Religion hath slyly crept in and incroacht among us: and besides their many known ways, they have a particular art of encouraging and fomenting all publick and private Differences and Discontents, pursuant to their secret Instructions for the advancement of the Papal Dominion.

Now, as it is impossible for the art of Physick to reduce the 4 Humors of a man's Body into one; so no arts of Policy can reduce the temper of men into one Persuasion of Religion.

*So that herein the wisdom of our Counsellors
is*

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is discerned, in contriving that their number may not come near the balance of the staple or establish'd interest of this Kingdom, both as to Church and State, wherein we are to shew our selves (like our predecessors) true English-men, and not to Italianate our selves to the Dependency of any other State.

And that this may be the more charitably perform'd, they may be distinguish'd into Actives, and Passives. By Actives I mean such as make it their whole business to pervert and captivate our Subjects to be subject to the Pope, under the notion of Religion; and by Passives I mean such as live innocently among us: and there is lesse caution and strictness requisite to those who are passive in respect barely of their Religion, then to those who are active in promoting it.

And therefore many ancient Laws have been made long before Henry the VIII. entituled Statutes of Præmunire; which word in English is, to fortify a place before enemies come, or to provide against any onset by them. And
all

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all those Laws are intended against the Pope's Spirituall or Temporall Invasions upon us : and those Laws do impose Penalties on such as shall any ways endeavour to assist him in such Invasions ; so that being forewarn'd, (as some would have the word from præmonere,) we may the better be fore-armed for prevention of all their future attempts upon us, which is heartily wisht by,

MY LORD,

February 18.
1674.

Your Lordship's most
humble Servant,

John Pettus.





Hill. 4. Jacobi.

The Case of Præmunire;

O R,

The Conviction and Attainder of *Robert Lalor*
Priest, being endited upon the Statute
of 16. *Rich. 2. cap. 5.*



HIS *Robert Lalor*, being a Native of this Kingdome, received his Orders of Priesthood above thirty years since at the hands of one *Richard Brady*, to whom the Pope had given the title of Bishop of *Kilmore* in *Ulster*; and for the space of twenty years together his authority and credit was not mean within the Province of *Leimster*. He had also made his name known in the Court of *Rome*, and held intelligence with the Cardinall who was Protector of this Nation, by means whereof he obtained the title and jurisdiction of *Vicar-general* of the See Apostolick within the Archbishoprick of

Of what quality and credit Robert Lalor was.

B

Dublin,

The Case of Præmunire.

His apprehension and first examination.

Dublin, and the Bishopricks of *Kildare* and *Fernes*. This pretended jurisdiction, extending well-nigh over all the Province of *Leimster*, he exercised boldly and securely many years together, untill the Proclamation was published, whereby all *Jesuites* and *Priests* ordained by forrein authority were commanded to depart out of this kingdome by a certain time prefixed. After which time he began to lurk and to change his name, howbeit at last he was apprehended in *Dublin*, and committed to prison in the Castle there. Upon his first Examination taken by the Lord Deputie himself, he acknowledged that he was a Priest, and ordained by a Popish Titulary Bishop; that he had accepted the title and Office of the Pope's *Vicar-generall* in the three Dioceses before named, and had exercised spirituall jurisdiction *in fora conscientie*; and in sundry other points he maintained and justified the Pope's authority: onely he said, he was of opinion that the Pope had no power to excommunicate or depose his Majestie, because the King is not of the Pope's Religion.

His first indictment and conviction.

The next Term after, he was indicted upon the Statute of 2 *Eliz.* enacted in this Realm against such as should wilfully and advisedly maintain and uphold the jurisdiction of any forrein Prince or Prelate in any causes Ecclesiasticall or Civil within this Realm. By which Statute the first offence of that kind is punished with losse of goods, and one year's imprisonment; the second offence incurreth the penaltie of the *Præmunire*; and the third offence is made high Treason. Upon this Indictment he was arraigned, convicted, and condemned, and so rested in prison during the next two Terms without any farther question. He then made petition unto the Lord Deputie to be set at liberty: whereupon his Lordship caused him to be examined by Sir *Oliver Saint John*, Sir *James Fullerton*, Sir *Jefferie Fenton*, the Attorney and Solicitor generall. At first he made some evasive and indirect answers; but at last voluntarily and freely he made this ensuing acknowledgement or confession, which being set down in writing word for word as he made it, was advisedly read by him, and subscribed with his

His second examination.

his own hand, and with the hands of those who took his examination; and afterwards he confirmed it by his oath before the Lord Deputie and Counsell.

*The Confession or Acknowledgement of
Robert Lalor Priest, made the
22. of December 1606.*

First, he doth acknowledge that he is not a lawfull *Vicar-general* in the Dioceses of *Dublin, Kildare and Fernes*, and thinketh in his conscience that he cannot lawfully take upon him the said Office. *His confession or acknowledgement.*

Item, he doth acknowledge our Sovereign Lord King *James* that now is to be his lawfull, chief and Supreme Governour in all causes, as well Ecclesiasticall as Civil, and that he is bound in conscience to obey him in all the said causes; and that neither the Pope, nor any other forrein Prelate, Prince or Potentate hath any power to controll the King in any cause Ecclesiasticall or Civil within this Kingdome, or any of his Majestie's Dominions.

Item, he doth in his conscience believe, that all Bishops ordained and made by the King's authority within any of his Dominions are lawfull Bishops, and that no Bishop made by the Pope, or by any authority derived from the Pope, within the King's Dominions, hath any power or authoritie to impugn, disannull or controll any Act done by any Bishop made by his Majestie's authoritie as aforesaid.

Item, he professeth himself willing and ready to obey the King, as a good and obedient Subject ought to doe, in all his lawfull commandments, either concerning his function of Priesthood, or any other dutie belonging to a good Subject.

B 2 After

After this Confession made, the State here had no purpose to proceed against him severely, either for his contempt of the Proclamation, or offence against the Law: So as he had more liberty then before, and many of his friends had access unto him; who telling him what they heard of his Confession, he protested unto them, that he had only acknowledged the King's *Civill* and *Temporall* power; without any confession or admittance of his authoritie in *Spirituall causes*. This being reported unto the Lord Deputie by sundry Gentlemen, who gave faith unto what he said, his Lordship thought fit, that since he had incurred the pain of *Præmunire* by exercising Episcopall jurisdiction as *Vicar-generall* to the Pope, that he should be attainted of that offence, as well to make him an example to others of his profession, (for almost in every Diocese of this Kingdome there is a Titulary Bishop ordained by the Pope;) as also that at the time of his Trial a just occasion might be taken to publish the Confession and acknowledgement which he had voluntarily made, signed, and confirmed by oath before the Lord Deputie and Councell, who have likewise subscribed their names as witnesses thereof.

Hereupon, in *Hillarie Term* 4 *Jacobi*, an Inditement was framed against him in the King's Bench upon the Statute of 16 *Rich. 2. cap. 5.* containing these severall points.

The Indite-
ment of Lalor
upon the stat.
of 16 Ric. 2.

1. That he had received a Bull or Brief purchased or procured in the Court of *Rome*, which Bull or Brief did touch or concern the King's Crown and dignity Royall, containing a Commission of Authoritie from the Pope of *Rome* unto *Richard Brady* and *David Magragh* to constitute a *Vicar-generall* for the See of *Rome*, by the name of the See *Apostolick*, in the severall Dioceses of *Dublin*, *Kildare* and *Fernes*, within this Kingdome of *Ireland*.

2. That by pretext or colour of that Bull or Brief he was constituted *Vicar-generall* of the See of *Rome*, and took upon him the style and title of *Vicar-generall* in the said severall Dioceses.

3. That he did exercise Ecclesiasticall Jurisdiction as *Vicar-generall* of the See of *Rome*, by instituting divers persons to

to Benefices with cure of souls, by granting dispensations in causes Matrimonial, by pronouncing sentences of divorce between divers married persons, and by doing all other acts and things pertaining to Episcopal Jurisdiction, within the said several Dioceses, against our Sovereign Lord the King, his Crown and dignity Royal, and in contempt of his Majesty, and disherison of his Crown, and contrary to the form and effect of the Statute, &c.

To this Inditement *Lalor* pleaded *Not guilty*; and when the issue was to be tried, the name and reputation of the man, and the nature of the cause, drew all the principal Gentlemen both of the *Pale* and *Provinces* that were in town to the hearing of the matter. At what time a substantial Jury of the City of *Dublin* being sworn for the trial, and the points of the Inditement being opened and set forth by the King's Serjeant; the Attorney general thought it not impertinent, but very necessary, before he descended to the particular evidence against the prisoner, to inform and satisfie the hearers in two Points.

1. What reason moved us to ground this Inditement upon the old Statute of 16 *Rich.* 2. rather then upon some other later Law made since the time of King *Henr.* 8.

2. What were the true causes of the making of this Law of 16 *Rich.* and other former Laws against *Provisors* and such as did appeal to the Court of *Rome* in those times, when both the Prince and people of *England* did for the most part acknowledge the Pope to be the *thirteenth Apostle*, and onely oracle in matters of Religion, and did follow his doctrine in most of those points wherein we now dissent from him.

1. For the first Point, we did purposely forbear to proceed against him upon any later Law, to the end that such as were ignorant might be informed, that long before King *Henr.* 8. was born, divers Laws were made against the Usurpation of the Bishop of *Rome* upon the rights of the Crown of *England*, well-nigh as sharp and as severe as any Statutes which have been made in later times; and that therefore we made choice to proceed upon a Law made
more

more then 200 years past, when the King, the Lords and Commons, which made the Laws, and the Judges, which did interpret the Laws, did for the most part follow the same opinions in Religion which were taught and held in the Court of Rome.

*The true
cause of ma-
king the Sta-
tute of 16 R.
2. and other
Statutes a-
gainst Provi-
sors.*

2. For the second Point, the causes that moved and almost enforced the *English* Nation to make this, and other Statutes of the same nature, were of the greatest importance that could possibly arise in any State. For these Laws were made to uphold and maintain the Sovereignty of the King, the Liberty of the people, the Common Law, and the Commonweal, which otherwise had been undermined and utterly ruined by the Usurpation of the Bishop of Rome.

For albeit the Kings of *England* were absolute Emperours within their Dominions, and had under them as learned a Prelacy and Clergy, as valiant and prudent a Nobility, as free and wealthy a Commonalty, as any was then in Christendom: yet if we look into the stories and records of these two Imperial Kingdoms, we shall find, that if these Laws of *Provision* and *Præmunire* had not been made, they had lost the name of Imperial, and of Kingdoms too, and had been long since made Tributary Provinces to the Bishop of Rome, or rather part of *S. Peter's* Patrimony in demesne. Our Kings had had their Scepters wrested out of their hands, their Crowns spurned off from their heads, their necks trod upon, they had been made Lacquays or Footmen to the Bishop of Rome, as some of the Emperours and *French* Kings were; our Prelates had been made his Chaplains and Clerks, our Nobility his Vassals and Servants, our Commons his Slaves and Villains, if these Acts of manumission had not freed them. In a word, before the making of these Laws, the flourishing Crown and Commonwealth of *England* was in extream danger to have been brought into most miserable servitude and slavery, under colour of Religion and devotion to the See of Rome. And this was not onely seen and felt by the King, and much repined at and protested against by the Nobility, but the Commons, the general multitude of the Subjects, did exclaim and cry out

out upon it. For the Commons of *England* may be an example unto all other Subjects in the world in this, that they have ever been tender and sensible of the wrongs and dishonours offered unto their Kings, and have ever contended to uphold and maintain their honour and Sovereignty. And their faith and loyalty hath been generally such, (though every Age hath brought forth some particular monsters of disloyalty) as no pretence of zeal or religion could ever withdraw the greater part of the Subjects to submit themselves to a foreign yoke, no not when Popery was in her height and exaltation; whereof this Act and divers others of the same kind are clear and manifest testimonies. For this Act of 16 *Rich. 2.* was made at the prayer of the Commons: which prayer they make not for themselves, neither shew they their own self-love therein, (as in other Bills which contain their Grievances) but their love and zeal to the King and his Crown. When after the *Norman* Conquest they importuned their Kings for the *Great Charter*, they sought their own Liberties; and in other Bills preferred commonly by the Commons against *Sheriffs, Escheators, Purveyors*, or the like, they seek their own profit and ease: but here their Petition is to the King, to make a Law for the defence and maintenance of his own honour. They complain, That by Bulls and Processes from *Rome* the King is deprived of that Jurisdiction which belongs of right to his Imperial Crown: That the King doth lose the service and counsel of his Prelates and learned men by translations made by the Bishop of *Rome*: That the King's Laws are defeated at his will, the Treasure of the Realm is exhausted and exported to enrich his Court: And that by those means the Crown of *England*, which hath ever been free and subject unto none, but immediately unto God, should be submitted unto the Bishop of *Rome*, to the utter destruction of the King and the whole Realm; which God defend, say they: and thereupon, out of their exceeding zeal and fervency, they offer to live and die with the King in defence of the liberties of the Crown. And lastly, they pray and require the King by way of justice, to examine all the

The Statute of Præmunire made at the prayer of the Commons.

The effect of the Statute of 16 R. 2. c. 5.

the Lords in Parliament, what they thought of these manifest wrongs and usurpations, and whether they would stand with the King in defence of his Royall liberties, or no. Which the King did according to their Petition: and the Lords Spiritual and Temporal did all answer, that these Usurpations of the Bishop of *Rome* were against the liberties of the Crown, and that they were all bound by their allegiance to stand with the King, and to maintain his honour and Prerogative. And thereupon it was enacted with a full consent of the three Estates, That such as should purchase in the Court of *Rome*, or elsewhere, any *Bulls* or *Processses*, or other things which might touch the King in his Crown and dignitie Royall, and such as should bring them into the Realm, and such as should receive them, publish them, or execute them, they, their Notaries, Proctors, Maintainers and Counsellors, should be all out of the King's protection, their lands and goods forfeited to the King, their bodies attached if they might be found, or else processe of *Præmunire facias* to be awarded against them. Upon these motives, and with this affection and zeal of the people, was the Statute of 16 *Rich. 2.* made, whereupon we have framed our Inditement.

Now let us look higher, and see whether the former Laws made by King *Edw. 1.* and King *Edw. 3.* against the Usurpation of the Bishop of *Rome* were not grounded upon the like cause and reason. The Statute of 38 *Edw. 3. cap. 1.* expressing the mischiefs that did arise by *Breves* of Citation, which drew the bodies of the people, and by *Bulls* of Provision and Reservation of Ecclesiasticall Benefices, which drew the wealth of the Realm, to the Court of *Rome*, doth declare, that by these means the ancient Laws, Customes and Franchises of the Realm were confounded, the Crown of our Sovereign Lord the King diminished, and his person falsely defamed, the Treasure and riches of the land carried away, the Subjects of the Realm molested and impoverished, the Benefices of Holy Church wasted and destroyed, Divine service, Hospitalitie, Almsdeeds, and other works of charitie neglected.

Again,

*The effect of
the Statute
of 38 Edw.
3. cap. 1.*

Again, 27 *Edw. 3. cap. 1.* upon the grievous and clamorous complaint (for that phrase is there used) of the great men and Commons touching *Citations and Provisions*, it is enacted, That the offenders shall forfeit their lands, goods and chattels, and their bodies be imprisoned and ransomed at the King's will. But in the Statute of 25 *Edw. 3.* wherein the first Law against *Provisors* made 25 *Edw. 1.* is recited, there is a larger declaration of these inconveniences then in the two last Acts before mentioned. For there all the Commons of the Realm do grievously complain, That whereas the Holy Church of *England* was first founded in estate of Prelacie by the Kings and Nobilitie of that Realm, and by them endowed with great possessions and revenues in lands, rents and Advowsons, to the end the people might be informed in Religion, Hospitality might be kept, and other works of Charitie might be exercised within the Realm; And whereas the King and other founders of the said Prelacies were the rightfull Patrons and Adowees thereof, and upon avoidance of such Ecclesiasticall promotions had power to advance thereunto their kinsmen, friends, and other learned men of the birth of that Realm, which being so advanced became able and worthy persons to serve the King in Counsell, and other places in the Commonweal: The Bishop of *Rome*, usurping the Seigniory of such possessions and Benefices, did give and grant the same to Aliens, which did never dwell in *England*, and to Cardinals, which might not dwell there, as if he were rightfull Patron of those Benefices; whereas by the Law of *England* he never had right to the Patronage thereof; whereby in short time all the Spirituall promotions in the Realm would be ingrossed into the hands of Strangers, Canonically elections of Prelates would be abolished, works of Charity would cease, the founders and true patrons of Churches would be disinherited, the King's Counsell would be weakened, the whole Kingdome impoverished, and the Laws and rights of the Realm destroyed. Upon this complaint it was resolved in Parliament, That these oppressions and grievances should not be suffered in any manner: and therefore it was enacted,

The Statute of 27 Ed. 3. cap. 1.

The Statute of 25 Edw. 3. reciting the Statute of 25 Ed. 1.

The Case of Prebendary.

That the King and his Subjects should thenceforth enjoy the rights of patronage; That free elections of Archbishops, Bishops, and other Prelates elective, should be made according to the ancient grants of the King's Progenitors and their founders; That no *Bulls* of *Provision* should be put in execution, but that the *Provisors* should be attached, fined, and ransomed at the King's will, and withall imprisoned till they had renounced the benefits of their *Bulls*, satisfied the partie grieved, and given sureties not to commit the like offence again.

Now, Master *Lalor*, what think you of these things? Did you believe that such Laws as these had been made against the Pope 200, 250, 300 years since? Was King *Hen. 8.* the first Prince that opposed the Pope's usurped Authority? Were our Protestants the first Subjects that ever complained of the Court of *Rome*? Of what Religion, think you, were the propounders and enactors of these Laws? Were they good Catholics? or good Subjects? or what were they? You will not say they were Protestants, for you will not admit the Reformed Religion to be so ancient as those times: neither can you say they were unchristian, for they strove to uphold their liege Lord's Sovereignty. Doubtless the people in those days did generally embrace the vulgar errors and superstitions of the *Romish* Church, and in that respect were Papists as well as you: but they had not learned the new doctrine of the Pope's Supremacie, and transcendent authority over Kings; they did not believe he had power to depose Princes, and discharge Subjects of their allegiance, to abrogate the fundamentall Laws of Kingdomes, and to impose his Canons as binding laws upon all nations, without their consents: they thought it a good point of Religion to be good Subjects, to honour their King, to love their country, and to maintain the laws and liberties thereof, howsoever in other points they did erre and were misled with the Church of *Rome*.

So as now (Master *Lalor*) you have no excuse, no evasion, but your conscience must condemn you as well as the Law; since the Law-makers in all Ages, and all religious Papists and Protestants, do condemn you: unless you think your

*These Laws
made by such
as did pro-
fesse the Ro-
mish Religion.*

your self wiser then all the Bishops that were then in *England*, or all the Judges who in those days were learned in the Civil and Canon Laws as well as in the Common Laws of *England*. But you, being an *Irish* man, will say, perhaps, these Laws were made in *England*, and that the *Irish* Nation gave no particular consent thereunto, onely there was an implicate consent wrapt and folded up in generall terms given in the Statute of 10 *Hen. 7. cap. 22.* whereby all Statutes made in *England* are established and made of force in *Ireland*. Assuredly, though the first Parliament held in *Ireland* was after the first Law against *Provisors* made in *England*, yet have there been as many particular Laws made in *Ireland* against *Provisions*, *Citations*, *Bulls* and *Breves* of the Court of *Rome*, as are to be found in all the Parliament-Rolls in *England*. What will you say if in the self-same Parliament of 10 *Hen. 7. cap. 5.* a special Law were made, enacting, authorizing and confirming in this Realm all the Statutes of *England* made against *Provisors*? if before this the like Law were made 32 *Hen. 6. cap. 4.* and again 28 *Hen. 6. cap. 30.* the like? and before that, the like Law were made 40 *Edw. 3. cap. 13.* in the famous Parliament of *Kilkenny*? if a Statute of the same nature were made 7 *Edw. 4. cap. 2.* and a severer Law then all these 16 *Edw. 4. cap. 4.* That such as purchase any *Bulls* of *Provision* in the Court of *Rome*, as soon as they have published or executed the same to the hurt of any incumbent, should be adjudged traitors? Which Act, if it be not repealed by the Statute of *Queen Mary*, may terrifie Master *Lalor* more then all the Acts which are before remembered.

Laws against Provisors made in Ireland.

But let us ascend yet higher, to see when the Pope's Usurpation, which caused all these complaints, began in *England*, with what success it was continued, and by what degrees it rose to that height, that it well might over-toppe the Crown: whereby it will appear whether he had gained a circle by prescription, by a long and quiet possession before the making of these Laws.

When the Pope began first to usurp upon the liberties of the Crown of England.

The first encroachment of the Bishop of *Rome* upon the liberties of the Crown of *England* was made in the time of

A comparison
of the Spiritu-
al Monarchy
of the Church
with the tem-
poral Monar-
chies of the
world.

King *William the Conqueror*. For before that time the Pope's Writ did not run in *England*, his *Bulls of Excommunication* and *Provision* came not thither, no *Citation*, no *Appeals* were made from thence to the Court of *Rome*. Our Archbishops did not purchase their *Palls* there, neither had the Pope the *Investiture* of any of our *Bishopricks*. For it is to be observed, that as under the Temporal Monarchy of *Rome* *Britany* was one of the last Provinces that was won, and one of the first that was lost again : so under the Spiritual Monarchy of the Pope of *Rome* *England* was one of the last Countries of Christendom that received his yoke, and was again one of the first that did reject and cast it off. And truly, as in this, so in divers other points, the course of this Spiritual Monarchy of the Pope may be aptly compared with the course of the Temporal Monarchies of the world. For as the Temporal Monarchies were first raised by intrusion upon other Princes and Commonweals ; so did this Spiritual Prince (as they now style him) grow to his greatness by usurping upon other States and Churches. As the Temporal Monarchies, following the course of the Sun, did rise in the East, and settle in the West ; so did the Hierarchy or government of the Church. Of the four Temporal Monarchies the first two were in *Asia*, the latter two in *Europe* ; but the *Roman* Monarchy did surpass and suppress them all : So were there four great Patriarchs, or Ecclesiastical Hierarchies, two in the East, and two in the West ; but the *Roman* Patriarch exalted himself, and usurped a Supremacy above them all. And as the rising of the *Roman* Empire was most opposed by the State of *Carthage* in *Africa*, (*amula Rome Carthago*) so the Council of *Carthage* and the *African* Bishops did first forbid Appeals to *Rome*, and opposed the Supremacy of the Pope. And doth not *Daniel's* Image, whose head was of gold, and legs and feet of iron and clay, represent this Spiritual Monarchy as well as the Temporal, whereas the first Bishops of *Rome* were golden Priests, though they had but wooden Chalice, and that the Popes of later times have been for the most part worldly and earth'y-minded ? And as the Northern Nations first re-
volved

volted from the *Roman* Monarchy, and at last brake it in pieces; have not the North and North-west Nations first fallen away from the Papacy? and are they not like in the end to bring it to ruine?

But to return to our purpose; The Bishop of *Rome* before the first *Norman* Conquest had no jurisdiction in the Realm of *England*, neither in the time of the *Britans*, nor in the time of the *Saxons*. *Eleutherius* the Pope within less then 200 years after *Christ* writes to *Lucius* the *British* King, and calls him *God's Vicar* within his Kingdom: which title he would not have given to that King, if himself, under pretence of being *God's Vicar generall* in earth, had claimed jurisdiction over all Christian Kingdoms.

The Pope had no jurisdiction in England in the time of the Britans.

Pelagius the Monk of *Bangor*, about the year 400, being cited to *Rome*, refused to appear upon the Pope's citation, affirming that *Britain* was neither within his Diocese nor his Province.

After that, about the year 600, *Augustine* the Monk was sent by *Gregory* the Great into *England* to convert the *Saxons* to Christian Religion; the *British* Bishops then remaining in *Wales* regarded not his Commission nor his doctrine, as not owing any duty, nor having any dependency on the Court of *Rome*, but still retained their ceremonies and traditions which they received from the East Church upon the first plantation of the Faith in that Island, being divers and contrary to those of the Church of *Rome*, which *Augustine* did endeavour to impose upon them.

The like doth *Beda* write of the *Irish* Priests and Bishops. For in the year 660. he reporteth, that a Convocation of the Clergy being called by King *Oswif*, there rose a disputation between *Colman* one of our *Irish* Saints, then present in that Synod, and *Wilfrid* a *Saxon* Priest, touching the observation of *Easter*, wherein the *British* and *Irish* Churches did then differ from the Church of *Rome*. *Colman*, for the celebration of *Easter* used in *Ireland*, affirmed it was the same *quod beatus Evangelista Joannes, discipulus specialiter a Domino dilectus, in omnibus quibus praeerat Ecclesiae celebrasse legitur*. On the other part *Wilfrid* alledged, that all the Churches

Churches of Christendom did then celebrate Easter after the Roman manner, except the Churches of the Britains and Picts, qui contra totum orbem (saith he) stulto labore pugnant. Whereunto Colman replied, Miror quare stultum laborem ap-
 pellus, in quo tanti Apostoli qui super petrum Domini recumbere digni fuit exempla sectamur. Numquid reverendissimum patrem nostrum Columbum & ejus successores, viros à Deo dilectos, divini paginis contraria sapuisse aut egisse credendum est? In this disputation or dialogue two things may be observed: first, that at this time the authority of the Bishop of Rome was of no estimation in these Islands: next, that the Primitive Churches of Britany and Ireland were instituted according to the form and discipline of the East Churches, and not of the West, and planted by the Disciples of John, and not of Peter. Thus much for the time of the Britains. For the Saxons, though King Ina gave the Peter-pence to the Pope, partly as Almes, and partly in recompence of a house erected in Rome for entertainment of English pilgrims; yet it is certain that Alfred and Athelstane, Edgar and Edmund, Canutus and Edward the Confessor, and divers other Kings of the Saxon race, did give all the Bishopricks in England per annulum & baculum, without any other ceremony, as the Emperour and the French King and other Christian Princes were wont to doe. They made also severall Laws for the government of the Church: Among others Saint Edward begins his Laws with this protestation, that it is his Princely charge, ut populum Domini, & super omnia sanctam Ecclesiam, regat & gubernet. And King Edgar, in his Oration to his English Clergy, Ego (saith he) Constantinis vos Petri gladium habetis: jungamus dextras, & gladium gladio copulemus, ut ejiciantur extra castra leprosis & purgeur sanctorum Domini. So as the Kings of England with their own Clergy did govern the Church, and therein sought no aid of the Court of Rome. And the troth is, that though the Pope had then long hands, yet he did not extend them so far as England, because they were full of business nearer home in drawing the Emperour and the French King under his yoke. But upon the Conquest made by the Normans, he apprehended

ded the first occasion to usurp upon the Liberties of the Crown of England. For the Conquerour came in with the Pope's Banner, and under it wone the battel which got him the garland : and therefore the Pope presumed he might boldly pluck some flowers from it, being partly gained by his countenance and blessing. Hereupon he sent two Legates into England, which were admitted and received by the Conquerour. With them he called a Synod of the Clergy, and deposed old *Stigand* Archbishop of Canterbury, because he had not purchased his Pall in the Court of Rome ; he displaced many Bishops and Abbots to place his Normans in their rooms. And amongst the rest it is to be noted, that the King having earnestly moved *Wolstan* Bishop of Worcester, being then very aged, to give up his Staff, his answer was, that he would give up his Staff onely to him of whom he first received the same. And so the old man went to Saint Edward's Tomb, and there offered up his Staff and Ring, with these words, *Of thee, O holy Edward, I received my Staff and my Ring, and so thee I do now surrender the same again.* Which proves, that before the Norman Conquest the King did invest his Bishops *per annulum & baculum*, as I said before.

Thus we see, by the admission of the Pope's Legates, the first step or entry made into his usurped jurisdiction in England. Albeit the King still retained the absolute power of investing Bishops, and seemed onely to use the advice and assistance of the Legates in Ecclesiastical matters ; for that no Decree passed or was put in execution without his Royal assent thereunto. Besides, how far forth he submitted himself to the Pope, it appeareth by a short Epistle which he wrote to Gregory the 7. in this form. *Excellentissimo Sanctæ Ecclesiæ Pastori, Gregorio, gratiâ Dei Anglorum Rex & Dux Normannorum Willielmus salutem cum amicis. Hubertus Legatus tuus, Religiose Pater, ad me veniens ex tua parte me admonuit, ut tibi & successoribus tuis fidelitatem facerem, & de pecunia quam antecessores mei ad Romanam Ecclesiam mittere solebant melius cogitarem. Unum admisi, alterum non admisi : fidelitatem facere nolui, nec volo, quia nec ego promisi, nec antecessores.*

The first usurpation of the Pope upon the Crown began in the time of King William the Conquerour.

By sending Legates into England.

cessores meos antecessoribus tuis id fecisse comperio. Pecunia tribus ferè annis, in Galliis me agente, negligenter collecta est: nunc vero divinâ misericordiâ me in Regnum meum reverso, quod collectum est per præsum Legatum mittetur; & quod reliquum est, per Legatos Lanfranci Archiepiscopi fideles nostri, cum opportunum fuerit, transmittetur, &c.

In the time of William Rufus the Pope attempted to draw Appeals to Rome, but prevailed not.

But in the time of his next Successour King *William Rufus* they attempted to pass one degree farther, that is, to draw Appeals to the Court of Rome. For *Anselme* being made Archbishop of *Canterbury*, and being at some difference with the King, besought his leave to goe to *Rome*, under pretence of fetching his Pall. The King, knowing he would appeal to the Pope, denied him leave to goe, and withall told him, That none of his Bishops ought to be subject to the Pope, but the Pope himself ought to be subject to the Emperour; and that the King of *England* had the same absolute liberties in his Dominions as the Emperour had in the Empire; and that it was an ancient custome and law in *England*, used time out of mind before the Conquest, that none might appeal to the Pope without the King's leave; and that he that breaketh this law or custome doth violate the Crown and dignity Royal, and he that violates my Crown (saith he) is mine enemy, and a traitour. How answer you this, quoth the King? Christ himself answers you, saith the Archbishop, *Tu es Petrus, & super hanc petram, &c.* Where-with the King was nothing satisfied. And thereupon *Anselme* departing out of the Realm without licence, the King seized his Temporalties, and became so exasperate and implacable towards the Bishop, as he kept him in perpetual exile during his Reign, albeit great intercession were made for his return, as well by the Pope as the King of *France*.

In the time of K. Henry the first the Pope usurped the donation of Bishopricks, &c.

In the time of the next King *Hen. 1.* though he were a learned and a prudent Prince, yet they sought to gain a farther point upon him, and to pluck a flower from his Crown of greater value, namely the Patronage and Donation of Bishopricks, and all other Benefices Ecclesiasticall. For *Anselme* being revok'd and re-established in the See of *Canterbury*, the Bishopricks of *Salisbury* and *Hereford* fell void, which

which the King bestowed on two of his Chaplains. But *Anselme* their Metropolitan did refuse to consecrate them, so as the Archbishop of *York* was fain to perform that Office, who with the chief of the *English* Clergie stood with the King, and withstood *Anselme*. Hereupon the King requires him to doe his homage : the Bishop denies it. The King demands of him whether the patronage and investiture of all Bishopricks were not his rightfull inheritance : the Bishop said it was not his right, because Pope *Urban* had lately made a Decree that no Lay person should give any Ecclesiasticall Benefice. This was the first question that ever was made touching the King of *England's* right of patronage and donation of Bishopricks within his dominions. This new question caused many messages and embassages to *Rome*. At last the King writes plainly to the Pope, *Notum habeat Sanctitas vestra, quod me vivente (Deo auxiliante) dignitates & usus regni nostri non minuentur, & si ego (quod absit) in tanta me directione ponerem, magnates mei, imo totius Anglia populus id nullo modo pateretur.* Besides, *William de Warrenast*, the King's procurator in the Court of *Rome*, told the Pope that the King would rather lose his Kingdome then he would lose the donation of Bishopricks. The Pope answered, Know you precisely, Sir, I speak it before God, that for the redemption of my head I would not suffer him to enjoy it.

Hist. Jernan-
lenfis M. S.
in Archiv.
Rob. Cotton
Eq. Aur.

After this *Anselme* being received into the King's favour, in a Synod of the *English* Clergie holden at *London* in the year 1107. a Decree was made, *Cui annuit Rex Henricus, scilicet Matth. Paris, that from thenceforth nunquam per donationem baculi Pastoralis vel Annuli quisquam de Episcopatu vel Abbatia per Regem, vel quamlibet laicam manum, investiretur in Anglia.* In recompence whereof the Pope yielded this favour to the King, that thenceforth no Legate should be sent from the Pope's side into *England*, unless the King required it; and that the Archbishop of *Canterbury* for the time being should be for ever *Legatus natus* : and *Anselme*, for the honour of his See, obtained, that the Archbishop of *Canterbury* should in all generall Councils sit at the Pope's foot *sicquam alterius orbis Papa.* Notwithstanding, as the suc-

D

ceeding

ceeding Popes kept not their promise touching the sending of Legates, so this self-same King, after the death of *Anselme*, broke the Decree touching the investiture of the Bishops. For he gave the Archbishoprick of *Canterbury* to *Rodolph* Bishop of *London*, saith *Matth. Paris*, *Et illum per Anulum & Pastoralem Baculum investivit*; as before he had invested *Willielmum* Gifford in the Bishoprick of *Winchester*, contra novi Concilii statuta, as the same Authour reporteth.

In the time of King Stephen the Pope gained Appeals to the Court of Rome.

The times of the next succeeding King *Stephen* were full of Civil dissensions, which made the land well-nigh waste, so as Saint Peter's Successour could not take any fish in such troubled waters. Yet during this King's reign they wone that point of jurisdiction which they attempted to get, but failed thereof, in the time of King *William Rufus*; namely, That Appeals might be made to the Court of *Rome*. For in a Synod at *London* summoned by *Henr.* Bishop of *Winchester*, the Pope's Legate, it was decreed, That Appeals should be made from Provinciaall Councils to the Pope. Before that time *Appellationes in usu non erant*, saith a Monk of that time, *donec Henricus Winton. Episcopus malo suo, dum Legatus esset, crudeliter intravit*. Thus did the Pope usurp three main points of Jurisdiction upon three severall Kings after the Conquest, (for of *William Rufus* he could win nothing:) namely, upon the Conquerour, the sending of Legates or Commissioners to hear and determine Ecclesiasticall causes; upon *Hen. 1.* the Donation and Investiture of Bishopricks and other Benefices; upon King *Stephen*, the Appeals to the Court of *Rome*.

In the time of K. Henry 2. the Pope claimed exemption of Clerks from the Secular power.

Now are we come to King *Hen. 2.* in whose time they made a farther encroachment upon the Crown, whereby they endeavoured to make him but half a King, and so take away half his Subjects, by exempting all Clerks from Secular power. Hereupon rose that long and great contention between King *Hen. 2.* and *Thomas Becket*, which on *Becket's* behalf may be rightly termed rebellion and treason: the just cause and ground whereof was the same that made the late difference between the Pope and the *Venetians*. For a Priest

Priest had committed a foul murder, and being thereof indicted and convicted, prayed the benefit of his Clergie; which being allowed unto him, he was delivered to the Bishop of Salisbury, being his Ordinary, to make his purgation: which the murderer failing to doe, should by the Law have been degraded, and delivered back to the Secular power. But the Bishop contemning the Law of the land, to enlarge the liberties of the Church, sent his prisoner to *Thomas Becket* then Archbishop of *Canterbury*, who shifted him into an Abbey, and so rescued him from the capital punishment he had justly deserved.

*A brief of
Th. Becket's
troubles, or
rather trea-
surer.*

This gap of impunitie being once opened, the Clergie grew so outrageous, as the King was informed of a hundred murders committed by Clerks, and yet not one of them executed for the same; for that the Archbishop had protected them all after the same manner. For this the King was justly incensed against the Archbishop, who justified his doing herein. Whereupon a common Council as well of the Bishops as of the Nobility was called, wherein they did revive and re-establish the ancient laws and customes of the Kingdome for the government of the Clergie, and ordering of causes Ecclesiasticall, whereof these were the principal Heads or Articles.

*The Consti-
tutions of
Clarendon.*

1. That no Bishop nor Clerk should depart the Realm without the King's licence; and that such as obtained licence should give sureties that they should procure no hurt or damage to the King or Realm during their absence in forrein parts.

2. That all Bishopricks and Abbeyes being void should remain in the King's hands as his own demesnes, untill he had chosen and appointed a Prelate thereunto; and that every such Prelate should doe his homage to the King before he were admitted unto the place.

3. That Appeals should be made in causes Ecclesiasticall in this manner: from the Archdeacon to the Ordinary, from the Ordinary to the Metropolitan, from the Metropolitan to the King, and no farther.

4. That *Peter-pence* should be paid no more to the Pope, but to the King.

The Case of Præmunire.

5. That if any Clerk should commit Felony, he should be hanged; if Treason, he should be drawn and quartered.

6. That it should be adjudged high Treason to bring in *Bulls* of *Excommunication* whereby the Realm should be cursed.

7. That no Decree should be brought from the Pope to be executed in *England*, upon pain of imprisonment and confiscation of goods.

To these and other Constitutions of the like nature made at *Clarendon* all the rest of the Bishops, and great men did subscribe, and bound themselves by oath to observe the same absolutely; onely the Archbishop would not subscribe, and swear, but with a *Saving*, *sa'vo suo ordine & honore sanctæ Ecclesiæ*: yet at last he was content to make the like absolute Subscription and Oath as the rest had done, but presently he repented; and to shew his repentance suspended himself from celebrating Masse, till he had received absolution from the Pope. Then he began to maintain and justifie the exemption of Clerks again; whereat the King's displeasure was kindled anew: and then the Archbishop once again promised absolute obedience to the King's Laws. (See the fickleness and mutability of your constant Martyr.) The King, to bind fast this slippery *Proteus*, called a Parliament of the Bishops and Barons, and sending for the Roll of those Laws, required all the Bishops to set their Seals thereunto. They all assented but the Archbishop, who protested he would not set his Seal, nor give allowance to those Laws. The King, being highly offended with his rebellious demeanour, required the Barons in Parliament to give Judgement of him, who being his Subject would not be ruled by his Laws: *Cirò facite mihi justitiam de illo, qui homo meus ligens est & stare Juri in Curia mea recusat*. Whereupon the Barons proceeding against him, and being ready to condemn him; I prohibit you (quoth the Archbishop) in the name of Almighty God to proceed against me, for I have appealed to the Pope; and so departed in contempt of that high Court, *Omnibus clamantibus, scilicet Hoveden, Quò progredieris, proditor? expecta & audi judicium tuum*. After this he lurked secretly

ly near the Sea-shore, and changing his apparell and name (like a Jesuit of these times,) he took shipping with a purpose to fly to *Rome* : but his passage being hindered by contrary winds, he was summoned to a Parliament at *Norhampton*, where he made default wilfully ; for which contempt his Temporalties were seized, and his body being attach'd, he was charged with so great an account to the King, as that he was found in arrear thirty thousand marks, and committed to prison ; whence he found means to escape shortly after, and to passe out of the Realm to *Rome*. He was no sooner gone, but the King sends Writs to all the Sherifs in *England* to attach the bodies of all such as made any Appeals to the Court of *Rome*. Hereupon many messages and letters passing to and fro, all the Suffragans of *Canterbury* joyn in a letter to the Pope, wherein they condemn the fugitive Archbishop, and justifie the King's proceedings. Upon this the Pope sends two Legates to the King being then in *Normandy*, to mediate for the Archbishop. They, with the mediation of the *French* King, prevailed so far with King *Henry*, as that he was pleased to accept his submission once again, and promised the King of *France*, that if he would be obedient to his Laws, he should enjoy as ample liberties as any Archbishop of *Canterbury* ever had : and so sent him into *England* with recommendation unto the young King his Son, then lately crowned ; who, hearing of his coming, commanded him to forbear to come to his presence, untill he had absolved the Archbishop of *York* and others, whom he had excommunicated for performing their duties at his Coronation. The Archbishop returned answer, that they had done him wrong in usurping his office ; yet if they would take a solemn oath to become obedient to the Pope's commandment in all things concerning the Church, he would absolve them. The Bishops understanding this, protested they would never take that oath unless the King willed them so to doe. King *Henry* the Father being hereof advertised into *France*, did rise into great passion and choler, and in the hearing of some of his servants uttered words to this effect ; *Will no man revenge me of mine enemies ?*

The Case of Præmunire.

*Four points
of jurisdiction
usurped upon
the crown of
England by
the Pope be-
fore the reign
of K. John.*

enemies? Whereupon the 4 Gentlemen named in the Stories of that time passed into *England*, and first moving the Archbishop to absolve the Bishops whom he had excommunicated for performing their Duties at the young King's Coronation, and receiving a peremptory answer of denial from the Archbishop, they laid violent hands upon him, and slew him: for which the King was fain not onely to suffer corporal penance, but in token of his humiliation to kisse the knee of the Pope's Legate. And this is the abridgement of *Becker's Troubles*, or rather Treasons, for which he was celebrated for so famous a Martyr. And thus you see by what degrees the Court of *Rome* did within the space of one hundred and odde years usurp upon the Crown of *England* four points of Jurisdiction. *Viz.* First, sending out of Legates into *England*. Secondly, drawing of Appeals to the Court of *Rome*. Thirdly, donation of Bishopricks and other Ecclesiasticall Benefices. And fourthly, exemption of Clerks from the Secular power. And you see withall how our Kings and Parliaments have from time to time opposed and withstood this unjust Usurpation.

Now then the Bishop of *Rome* having claimed and well-nigh recovered full and sole jurisdiction in all causes Ecclesiasticall, and over all persons Ecclesiasticall, with power to dispose of all Ecclesiasticall Benefices in *England*, whereby he had upon the matter made an absolute conquest of more then half the Kingdome, (for every one that could read the Psalm of *Miserere* was a Clerk, and the Clergie possessed the moiety of all temporall possessions,) there remained now nothing to make him owner and proprietor of all, but to get a surrender of the Crown, and to make the King his Farmer, and the people his Villains, which he fully accomplished and brought to passe in the times of King *John* and of *Hen. 3.*

*The cause of
the quarrell
between K.
John and the
Pope.*

The quarrell between the Pope and King *John*, which wretted the Scepter out of his hand, and in the end brake his heart, began about the Election of the Archbishop of *Canterbury*. I call it Election, and not Donation or Investiture:

ture: for the manner of investing of Bishops by the Staffe and Ring after the time of King Hen. 1. was not any more used, but by the King's licence they were Canonically elected, and being elected, the King gave his Royall assent to their election, and by restitution of their Temporalties did fully invest them. And though this course of election began to be in use in the time of Rich. 1. and Hen. 2. yet I find it not confirmed by any Constitution or Charter before the time of King John, who by his Charter dated the fifteenth of January, in the sixteenth year of his Reign, granted this privilege to the Church of England in these words, viz. *Quod qualiscunque consuetudo temporibus predecessorum nostrorum hactenus in Ecclesia Anglicana fuerit observata, & quidquid juris nobis hactenus vindicaverimus, de cætero in universis & singulis Ecclesiis & Monasteriis, Cathedralibus & Conventualibus, totius regni Angliæ libere sint in perpetuum electiones quorumcumque Prelatorum, majorum & minorum. Salvâ nobis & heredibus nostris custodiâ Ecclesiarum & Monasteriorum vacantium que ad nos pertinent. Promittimus etiam quod nec impedimus nec impediri permittemus per ministros nostros, nec procurabimus, quin in universis & singulis Monasteriis & Ecclesiis, postquam vacaverint prelatura, quemcumque voluerint libere sibi præficiant electores Pastorum, petita tamen à nobis prius & heredibus nostris licentiâ eligendis, quam non denegabimus nec differemus. Et similiter, post celebratam electionem, noster requiratur assensus, quem non denegabimus, nisi adversus eandem rationale proposuerimus, & legitime probaverimus propter quod non debemus consentire, &c.*

When Canonical election began first in England.

But to return to the cause of his great quarrell with the Pope. The See of Canterbury being void, the Monks of Canterbury suddenly and secretly without the King's licence elected one Reignold their Subprior to be Archbishop, who immediately posted away to be confirmed by the Pope. But when he came there, the Pope rejected him, because he came not recommended from the King. Hereupon the Monks made suit to the King to nominate some fit person to whose election they might proceed. The King commends, John Gray Bishop of Norwich, his principall Counsellour,

*King John's
round and
Kingly Letter
to the Pope.*

fellour, who was afterward Lord Justice of this Kingdome, who with a full consent was elected by them, and afterwards admitted and fully invested by the King. These two elections bred such a controversie as none might determine but the Pope, who gave a short rule in the case, for he pronounced both elections void, and caused some of the Monks of *Canterbury*, who were then present in the Court of *Rome*, to proceed to the election of *Stephen Langton*, lately made Cardinal at the motion and suit of the *French King*: who being so elected was forthwith confirmed and consecrated by the Pope, and recommended to the King of *England* with a flattering Letter, and a present of four Rings set with precious Stones, which were of great value and estimation in those days. Howbeit the King more esteeming this Jewell of the Crown, namely, the Patronage of Bishopsricks, returned a round and Kingly answer to the Pope, That inconsiderately and rashly he had cassed and made void the election of the Bishop of *Norwich*, and had caused one *Langton*, a man to him unknown, and bred up and nourished amongst his mortal enemies, to be consecrated Archbishop, without any due form of election, and without his Royal assent, which was most of all requisite by the ancient laws and customes of his Realm. That he marvelled much, that the Pope himself and the whole Court of *Rome* did not consider what a precious account they ought to make of the King of *England's* friendship, in regard that his one Kingdome did yield them more profit and revenue then all the other countries on this side the *Alpes*. To conclude, he would maintain all his subjects from going to *Rome*. And since the Archbishops, Bishops and other Prelates within his dominions were as learned and religious as any other in Christendome, his subjects should be judged by them in Ecclesiasticall matters, and should not need to run out of their own country to beg Justice at the hands of strangers.

But what followed upon this? The Pope, after a sharp reply, sendeth forth a Bull of Malediction against the King,
and

and of Interdiction against the Realm, whereby all the Churches in *England* were shut up, the Priests and Religious persons were forbidden to use any Liturgies or Divine service, to marry, to bury, or to perform any Christian duty among the people. This put the King into such a rage, that he on the other part seized the Temporalties of all Bishops and Abbots, and confiscated the goods of all the Clergie. Then doth the Pope by a solemn sentence at *Rome* depose the King, and by a Bull sent into *England* discharge his subjects of their allegiance, and by a Legate sent to the King of *France* gave the Kingdome of *England* to him and his successours for ever.

*The Pope
curseth the
King, and
interdicteth
the Realm.*

These things brought such confusion and miserie to all estates and degrees of people in *England*, as the King became odious to all his subjects, as well to the Laetie as to the Clergie. For as the Bishops and religious people cursed him abroad, so the Barons took arms against him at home, till with much bloodshed they forced him, by granting the *Great Charter*, to restore King *Edward's* Laws containing the ancient Liberties of the subjects of *England*. The Pope being a spectator of this Tragedy, and seeing the King in so weak and desperate estate, sent a Legate to comfort him, and to make a reasonable motion unto him; to wit, that he should surrender and give up his Crown and Kingdome to the Pope, which should be re-granted unto him again to hold in Fee-farm and Vassalage of the Church of *Rome*: And that thereupon the Pope would blesse him and his Realm again, and curse his rebells and enemies in such sort, as he should be better established in his Kingdome then he was before. In a word, this motion was presently embraced by that miserable King, so as with his own hands he gave up the Crown to the Pope's Legat, and by an Instrument or Charter sealed with a Bull or Seal of gold he granted to God and the Church of *Rome*, the Apostles *Peter* and *Paul*, and to Pope *Innocent* the third and his successours, the whole Kingdome of *England*, and the whole Kingdome of *Ireland*; and took back an estate thereof by an Instrument sealed with Lead, yielding yearly to the Church of

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Rome

Rome over and above the *Peter-pence* a thousand marks sterling, viz. seven hundred marks for *England*, and three hundred marks for *Ireland*, with a flattering saving of all his Liberties and Royalties. The Pope had no sooner gotten this conveyance, though it were void in law, but he excommunicateth the Barons, and repeals the *Great Charter*, affirming that it contained liberties too great for his subjects; calls the King his Vassall, and these Kingdomes *Saint Peter's Patrimony*; grants a general Bull of Provision for the bestowing of all Ecclesiasticall Benefices, and takes upon him to be absolute and immediate Lord of all. And thus, under colour of exercising Jurisdiction within these Kingdomes, the Pope by degrees got the very Kingdomes themselves. And so would he doe at this day, if the King would give way to his Jurisdiction.

But what use did the Pope make of this grant and surrender of the Crown unto him? what did he gain by it, if our Kings retained the profits of their Kingdomes to their own use? Indeed we do not find that the Fee-farm of a thousand marks was ever pay'd, but that it is all run in arrear till this present day. For the troth is, the Court of *Rome* did scorn to accept so poor a revenue as a thousand marks *per annum* out of two Kingdomes. But after the death of King *John*, during all the reign of *Hen. 3.* his son, the Pope did not claim a Seignioury or a Rent out of *England* and *Ireland*; but did endeavour to convert all the profits of both Lands to his own use, as if he had been seized of all in demesne. For whosoever will reade *Matth. Paris* his story of the time of King *Hen. 3.* will say these things spoken of before were but the *beginnings of evils*. For the exactions and oppressions of the Court of *Rome* were so continuall and intolerable, as that poor Monk, who lived in those times, though otherwise he adored the Pope, doth call *England* *Baalams Asse* laden, beaten, and enforced to speak; doth call the Court of *Rome* *Charybdis* and *barathrum avaritie*, the Pope's Collectors *Harpies*, and the Pope himself a *Stepfather*, and the Church of *Rome* a *Stepmother*. He sheweth that two third parts of the Land being then
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in the hands of Church-men, the entire profits thereof were exported to enrich the Pope and the Court of *Rome*: which was done for the most part by these two ways and means. First, by conferring the best Ecclesiasticall Benefices upon *Italians*, and other Strangers resident in that Court, whose farmers and factors in *England* took the profits, turned them into money, and returned the money to *Rome*. Secondly, by imposing continuall taxes and tallages, (worse then *Irish cuttings*) being sometimes the tenth, sometimes the fifteenth, sometimes the third, sometimes the moietie of all the goods both of the Clergie and Laetie, under colour of maintaining the Pope's holy wars against the Emperour and the Greek Church, who were then said to be in rebellion against their Lady and mistress the Church of *Rome*. Besides, for the speedy levying and safe return of these moneys, the Pope had his *Lombards* and other *Italian* Bankers and Usurers resident in *London* and other parts of the Realm, who offered to lend and disburse the moneys taxed, and return the same by exchange to *Rome*, taking such penal Bands, the form whereof is set down in *Matth. Paris*, and such excessive Usury, as the poor Religious houses were faine to sell their Chalice and Copes, and the rest of the Clergie and Laity had their backs bowed and their estates broken under the burthen. Besides, the Pope took for perquisites and casualties the goods of all Clerks that died intestate, the goods of all Usurers, and all goods given to charitable uses. Moreover he had a swarm of Friars, (the first corrupters of Religion in *England*) who perswaded the Nobility and Gentry to put on the sign of the Crosse, and to vow themselves to the Holy wars, which they had no sooner done, but they were again perswaded to receive dispensations of their vows, and to give money for the same to the Church of *Rome*. I omit divers other policies then used by the Pope's Collectors to exhaust the wealth of the Realm, which they affirmed they might take with as good a conscience as the *Hebrews* took the Jewells of the *Egyptians*. Briefly, whereas the King had scarce means to maintain his Royall family, they received out of *England*

seventy thousand pounds sterling at least yearly, which amounteth to two hundred and ten thousand pounds sterling of the moneys currant at this day. Besides, they exported six thousand marks out of *Ireland* at one time, which the Emperour *Frederick* intercepted. Lastly, the King himself was so much dejected, as at a Royal Feast he placed the Pope's Legate in his own Chair of State, himself sitting on his right hand, and the Bishop of *York* on his left, *non sine multorum obliquantibus oculis*, saith *Matth. Paris*.

Thus we see the effect of the Pope's pretended Jurisdiction within the dominions of the King of *England*. We see to what calamity and servitude it then reduced both the Prince and people. Was it not therefore high time to meet and oppose those inconveniences? Assuredly if King *Edw. I.* who was the Son and heir of *Hen. 3.* had inherited the weakness of his Father, and had not resisted this Usurpation and insolencie of the Court of *Rome*, the Pope had been proprietor of both these Islands, and there had been no King of *England* at this day.

King *Edw. I.*
opposeth the
Pope's Usur-
pation.

But King *Edward I.* may well be styled *vindex Anglica libertatis*, the *Moses* that delivered his people from slavery and oppression: and as he was a brave and victorious Prince, so was he the best *Pater patriæ* that ever reigned in *England* since the *Norman* Conquest, till the Coronation of our gracious Sovereign. At the time of the death of his father he was absent in the war of the Holy land, being a principal Commander of the Christian Armie there, so as he returned not before the second year of his reign. But he was no sooner returned and crowned, but the first work he did was to shake off the yoke of the Bishop of *Rome*. For the Pope having then summoned a generall Council, before he would licence his Bishops to repair unto it, he took of them a solemn oath, that they should not receive the Pope's blessing. Again, the Pope forbids the King to war against *Scotland*; the King regards not his prohibition: he demands the First-fruits of Ecclesiasticall Livings; the King forbids the payment thereof unto him. The Pope sendeth forth a general Bull prohibiting the Clergie to pay subsidies or tributes
to

to Temporal Princes. A Tenth was granted to the King in Parliament, the Clergie refused to pay it: the King seizeth their Temporalities for their contempt, and got payment notwithstanding the Pope's Bull. After this he made the Statute of *Mortmain*, whereby he brake the Pope's chief net, which within an Age or two more would have drawn to the Church all the temporall possessions of the Kingdome, &c. Again, one of the King's subjects brought a Bull of Excommunication against another; the King commandeth he should be executed as a traitour, according to the ancient Law. But because that Law had not of long time been put in execution, the Chancellour and Treasurer kneeled before the King, and obtained grace for him, so as he was onely banished out of the Realm. And as he judged it treason to bring in Bulls of Excommunication; so he held it a high contempt against the Crown to bring in Bulls of Proviſion, or Briefs of Citation, and according'y the Law was so declared in Parliament 25 *Edw. 1.* which was the first Statute made against *Provisors*: the execution of which Law, during the life of King *Edw. 1.* did well-nigh abolish the usurped Jurisdiction of the Court of *Rome*, and did revive and restore again the ancient and absolute Sovereignty of the King and Crown of *England*.

His Successour K. *Edw. 2.* being but a weak Prince, the Pope attempted to usurp upon him again: but the Peers and people withstood his Usurpation. And when that unhappy King was to be deposed, amongst many Articles framed against him by his enemies, this was one of the most hainous, that he had given allowance to the Pope's Bulls.

E. 2. suffereth the Pope to usurp again.

Again, during the minority of King *Edw. 3.* and after that in the heat of the wars in *France*, the Pope sent many Briefs and Bulls into *England*; and at last presumed so far, as that he gave an *Italian* the title of a Cardinall in *England*, and withall by his Bull gave him power to bestow all Ecclesiasticall promotions as they should fall void from time to time. This moved the King and the Nobility to write to the Pope to this effect: "We and our ancestours have richly endowed the Church of *England*, and have founded Ab-

"beys

*E. 3. resisteth
the Usurpa-
tion of the
Pope.*

“beys and other Religious houses for the jurisdiction of our
“people, for maintenance of hospitalitie, and for the ad-
“vancement of our countrymen and kinsmen. Now you pro-
“vide and place strangers in our Benefices, that come not
“to keep residence thereupon; and if they come, under-
“stand not our language; and some of them are subjects
“to our mortal enemies: by reason whereof our people
“are not instructed, hospitalitie is not kept, our Scholars
“are unpreferred, and the Treasure of the Realm is expor-
ted. The Pope returneth answer, That the Emperour
had lately submitted himself to the Church of *Rome* in all
points, and was become the Pope’s great friend; and in
menacing manner advised the King of *England* to doe the
like. The King replies, That if the Emperour and *French*
King both should take his part, he was ready to give bat-
tall to both in defence of the liberties of his Crown. Here-
upon the severall Statutes against *Provisors* before recited
were put in execution so severely, as the King and his sub-
jects enjoyed their right of patronage clearly: and their
exemption of Clerks took no place at all; for that the Ab-
bot of *Waltham* and Bishop of *Winchester* were both attain-
ted of high contempts, and the Bishop of *Ely* of a capital of-
fence, as appeareth in the Records of this King’s reign. Yet
during the nonage of *Richard 2.* they began once again to en-
croach upon the Crown, by sending Legates and Bulls and
Briefs into *England*, whereof the people were so sensible and
impatient, as that at their special prayer this Law of *16 Rich.*
2. (whereupon our Indictment is framed) was enacted, being
more sharp and penall then all the former Statutes against
Provisors. And yet against this King, as against *Edm. 2.* it was
objected at the time of his Deprivation, that he had allowed
the Pope’s Bulls to the enthralling of the Crown.

King Rich. 2.

After this in the weak time of King *Hen. 6.* they made
one attempt more to revive their usurped Jurisdiction by
this policy: The Commons had denied the King a Subsidy
when he stood in great want of moneys. The Archbishop
of *Canterbury* and the rest of the Bishops. offered the King a
large supply of his wants if he would consent that all the

Laws

Laws against *Provisors*, and specially this Law of 16 Rich. 2. might be repealed. But *Humphrey* Duke of *Gloucester*, who had lately before cast the Pope's Bull into the fire, did likewise cause this motion to be rejected. So as by special providence these Laws have stood in force even till this day in both these Kingdomes.

Then the Attorney generall descended to the evidence, *The Evidence against Lalor.* whereby he proved fully all the parts of the Indictment. First, it was proved by *Lalor's* own Confession, upon severall Examinations taken before the Lord Deputie and Lord Chancellor and others, that he had accepted the Office and title of Vicar-general in the Dioceses of *Dublin*, *Kildare* and *Fernes*, by virtue of the Pope's Bull. Secondly, it appeared by the copies of sundry Letters found among his papers at his apprehension, that he styled himself the Pope's Vicar, in this form, *Robertus Dublinien. & Kildaren. & Fernen. Diæces. Vicarius Apostolicus.* Thrdly, there were produced the copies of divers Acts and Instruments, written for the most part with *Lalor's* own hand, some of Institutions of Popish Priests to Benefices, others of Dispensations with Marriage within the degrees, others of Divorces, others of Dispensations for non-payment of Tithes. Whereby it was manifestly proved that he did execute the Pope's Bull, in usurping and exercising Episcopall jurisdiction as Vicar-general of the See Apostolick within the Dioceses before named.

To this evidence he made a threefold answer. First, That he was no suiter for the office of Vicar-general, but it was imposed on him, and he accepted *virtute obedientie*, onely to obey his Superiours. Next, That he did exercise the office of Vicar-general *in foro conscientie tantum*, and not *in foro judicii*. And lastly, that those copies of Institutions, Dispensations and Divorces were many of them written with his man's hand, as precedents of such Acts and Instruments, without his privity or direction. Hereupon Sir *James Ley* Chief Justice told him, that he could not well say that he accepted that unlawfull office *virtute obedientie*, for there was no vertue in that obedience: That he ow'd an obedience to the Law, and to the King, who is the true Superiour

riour and Sovereign over all his subjects, and hath no Peer within his dominions; and that the Superiours whom he meant and intended were but Usurpers upon the King's Jurisdiction, and therefore this excuse did aggravate his contempt, in that it appeared he had vowed obedience to those who were apparent enemies to the King and his Crown. And though it were manifest that he exercised jurisdiction *in foro judicii*, (for every Institution is a Judgement, and so is every Sentence of divorce:) yet were his offence nothing diminished if he had executed his office of *Vicar-general* *in foro conscientie tantum*; for the court of man's conscience is the highest tribunall, and wherein the power of the Keys is exercised in the highest degree.

Hereunto the Attorney generall took occasion to adde thus much, That *Lalor* had committed these high offences, not onely against the Law, but against his own Conscience, and that he was already condemned *in foro conscientie*. For that he upon his second Examination had voluntarily acknowledged himself not to be a lawfull *Vicar-general*, and that he thought in his conscience he could not lawfully take upon him the said office. He hath also acknowledged our Sovereign Lord K. *James* to be his lawfull, Chief and Supreme Governour, in all causes, as well Ecclesiasticall as Civile; and that he is in conscience bound to obey him in all the said causes, &c. as it is contained in his Acknowledgement or Confession before set down. Which being shewed forth by the Attorney generall, the Court caused it to be publickly read; and thereupon demanded of *Lalor*, if that were not his free and voluntary confession signed with his own hand, and confirmed by his oath before the Lord Deputie and Councill. He was not a little abashed at the publishing of this Acknowledgement and Confession in the hearing of so many principal Gentlemen, to whom he had preached a contrary doctrine: therefore, said he, the shewing forth of this Confession is altogether impertinent and besides the matter. Howsoever he could not deny but that he made it, and signed it, and swore it, as it was testified by the Lord Deputie and the rest.

Lalor's Confession publickly read.

Then

Then was it demanded of him, whether since the making of this Confession he had not protested to divers of his friends, that he had not acknowledged the King's Supremacie in *Ecclesiasticall causes*. His answer was, That indeed he had said to some of his friends who visited him in the Castle of *Dublin*, that he had not confessed or acknowledged that the King was his Supreme Governour in *Spiritual causes*, for that the truth is, in the Confession there is no mention made of *Spiritual causes*, but of *Ecclesiasticall*.

This is a subtile evasion indeed, said the Attorney generall: I pray you what difference do you make between *Ecclesiasticall causes* and *Spiritual causes*? This question, said *Lalor*, is sudden and unexpected at this time, and therefore you shall doe well to take another day to dispute this point. Nay, said the Attorney generall, we can never speak of it in a better time or fitter place: and therefore though you, that bear so reverend a title, and hold the reputation of so great a Clerk, require a farther time; yet shall you hear that we Lay-men that serve his Majestie, and by the dutie of our places are to maintain the Jurisdiction of the Crown, are never so unprovided but that we can say somewhat touching the nature and difference of these Causes.

First then, let us see when this distinction of *Ecclesiasticall* or *Spiritual causes* from *Civile* and *Temporall causes* did first begin in point of jurisdiction. Assuredly for the space of three hundred years after *Christ* this distinction was not known or heard of in the Christian world. For the causes of *Testaments*, of *Matrimony*, of *Bastardy* and *Adultery*, and the rest which are called *Ecclesiasticall* or *Spiritual causes*, were merely *Civil*, and determined by the rules of the Civil Law, and subject onely to the jurisdiction of the Civil Magistrate, as all Civilians will testifie with me.

But after that the Emperours had received the Christian Faith, out of a zeal and desire they had to grace and honour the learned and godly Bishops of that time, they were pleased to single out certain speciall Causes wherein they granted jurisdiction unto the Bishops: namely, in causes of *Tithes*, because they were paid to men of the

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Church:

When the distinction of Ecclesiasticall & Spiritual causes from Civil and Temporal causes began in the world.

Church; in causes of *Matrimony*, because Marriages were for the most part solemnized in the Church; in causes *Testamentary*, because Testaments were many times made in *extremis*, when Church-men were present, giving spiritual comfort to the Testator, and therefore they were thought the fittest persons to take the probates of such Testaments. Howbeit these Bishops did not proceed in these causes according to the Canons and Decrees of the Church, (for the Canon Law was not then hatched or dream'd of) but according to the rules of the Imperiall Law, as the Civil Magistrate did proceed in other causes: neither did the Emperours, in giving this Jurisdiction unto them, give away their own Supreme and absolute power, to correct and punish these Judges as well as others, if they performed not their severall duties. This then is most certain, that the primitive Jurisdiction in all these causes was in the Civil Magistrate, and so in right it remaineth at this day; and though it be derived from him, it remaineth in him as in the fountain. Forevery Christian Monarch (as well as the godly Kings of *Juda*) is *custos utriusque Tabulae*; and consequently hath power to punish not onely Treason, Murther, Theft, and all manner of Force and Fraud; but Incest, Adultery, Usury, Perjury, Simony, Sorcery, Idolatry, Blasphemy. Neither are these Causes in respect of their own quality and nature to be distinguished one from another by the names of *Spiritual* or *Temporal*: For why is *Adultery* a *Spiritual* cause rather than *Murder*, when they are both offences alike against the Second Table? or *Idolatry* rather than *Perjury*, being both offences likewise against the First Table? And indeed if we consider the natures of these Causes, it will seem somewhat absurd that they are distinguished by the name of *Spiritual* and *Temporal*: for, to speak properly, that which is opposed to *Spiritual* should be termed *Carnall*; and that which is opposed to *Temporal* should be called *Eternall*. And therefore if things were called by their proper names, *Adultery* should not be called a *spiritual* offence, but a *carnall*. But shall I expresse plainly and briefly why these Causes were first denominated,

ted, some *Spiritual* or *Ecclesiasticall*, and others *Temporall* and *Civil*.

Truly they were so called, not from the nature of the Causes, as I said before, but from the quality of the persons whom the Prince had made Judges in those Causes. The Clergie did study *spiritual* things, and did professe to live *secundum spiritum*, and were called *spiritual men*; and therefore they called the Causes wherein Princes had given them jurisdiction *spiritual causes*, after their own name and quality. But because the Lay-magistrates were said to intend the things of this world, which are *temporall* and transitory, the Clergie called them *secular* or *temporall men*, and the Causes wherein they were Judges *temporall causes*. This distinction began first in the Court of *Rome*, where the Clergie having by this Jurisdiction gotten great wealth, their wealth begot pride, their pride begot ingratitude towards Princes, who first gave them their Jurisdiction, and then, according to the nature of all ungratefull persons, they went about to extinguish the memory of the benefit: for whereas their Jurisdiction was first derived from *Cesar*, in the execution whereof they were *Cesar's Judges*, so as both their Courts and Causes ought still to have borne *Cesar's image* and *superscription*, as belonging unto *Cesar*; they blotted *Cesar's* name out of the style of their Courts, and called them *Courts Christian*, as if the Courts holden by other Magistrates had been in comparison but Courts of *Ethnicks*; and the Causes which in their nature were meerly *Civil*, they called *Spiritual* and *Ecclesiasticall*. So as if the Emperour should challenge his Courts and Causes again, and say, *Reddite Cesari quæ sunt Cesaris*, they would all cry out on the contrary part and say, *Date Deo quæ sunt Dei*; our Courts bear the name and title of *Christ*, the superscription of *Cesar* is quite worn out, and not to be found upon them. And this point of their policy is worth the observing, that when they found their jurisdiction in Matrimoniall causes to be the next sweet and gainfull of all other, (for of *Matrimony* they made *matter of money* indeed) to the end that *Cesar* might never resume so rich a perquisite of their

their Spirituall jurisdiction, they reduced Matrimony into the number of the 7 *Sacraments* : after which time it had been Sacriledge, if the Civil Magistrate had intermeddled with the least matter that had relation to Matrimonic, or any dependencie thereupon. So then it appeareth, that all Causes whereof Ecclesiasticall or Spirituall persons have cognisance or jurisdiction by the grants or permission of Princes are called *Ecclesiasticall* or *Spirituall causes*. And as all their Courts are called *Spirituall Courts*, so all Causes determinable in those Courts are called *Spirituall Causes*. And therefore where Mr. *Lalor* hath acknowledged the King's Majestie to be Supreme Governour in all *Ecclesiasticall causes*, he hath therein acknowledged the King's Supremacie in all *Spirituall causes* ; wherein he hath but rendered to *Cesar* that which is *Cesar's*, and hath given unto his Majestie no more then all the Bishops of *England* have yielded to his Predecessours, not onely in this latter Age, but also in former times both before and since the Conquest, as hath been before at large expressed.

Here the day being far spent, the Court demanded of the prisoner if he had any more to say for himself. His answer was, That he did willingly renounce his office of *Vicar-generall*, and did humbly crave his Majestie's grace and pardon. And to that end, he desired the Court to move the L. Deputy to be favourable unto him. Then the Jury departed from the Bar, and returning within half an hour, found the prisoner guiltie of the Contempts whereof he was indicted. Whereupon the Solicitor generall moved the Court to proceed to Judgement. And Sir *Dominick Sarsfield*, Knight, one of the Justices of his Majestie's chief place, gave Judgement according to the form of the Statute whereupon the Indictment was framed.



OF THE
K I N G ' S

Ecclesiasticall Law.



IN the Term of *S. Hillary*, in the 33. ^{*Candrey's*} year of the Reign of *Q. Elizabeth*, ^{*Case.*} *Rotulo 340.* *Robert Candrey* Clerk brought an action of Trespasse against *George Atton*, for breaking of his Close at *North-Luffenham* in the County of *Rutland*, the 7. day of *August* in the 31. year of the Reign of the said Queen.

The Defendant pleaded not guilty, and the Jury returned and sworn for triall of this issue gave a speciall Verdict; that is, they found the truth of the Case at large, referring the same for the Law to the judgment of the Court, to this effect: They found that the Plaintiff before the Trespasse supposed to be done was Parson of the Rectory of *South-Luffenham*, in the County aforesaid, whereof the place wherein the Trespass is alledged was parcell;

parcells, and found the Statute made in the first year of the said Queen's Reign, by which in effect it is enacted, That such Jurisdiction Ecclesiasticall as by any Spirituall or Ecclesiasticall power hath heretofore been, or may lawfully be, exercised for the Visitation of the Ecclesiasticall estate and persons, and for reformation, order and correction of the same, and of all manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities within this Realm, should for ever be united and annexed to the Imperiall Crown of this Realm; And that her Highnesse, her Heirs and Successors, should have full power and authority by virtue of that Act, by Letters Patents under the great Seal of *England* to assign, nominate and authorize such persons, being natural-born Subjects, as her Highness, her Heirs or Successors should think meet, to exercise and execute under her Highnesse, her Heirs and Successors, all and all manner of Jurisdiction, Priviledges and Preheminences, in any wise touching or concerning any Spiritual or Ecclesiasticall Jurisdiction within this Realm of *England* and *Ireland*; and to visit, reform, redresse, order, correct and amend all such Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities whatsoever, which by any manner of Spiritual or Ecclesiasticall power, authority or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained or amended, to the pleasure of Almighty God, the encrease of vertue, and the conservation of the peace and unity of this Realm: And that such persons, so to be named, assigned and authorized, should have full power and authority by virtue of that Act, and of such Letters Patents, under her Highnesse, her Heirs and Successors, to exercise, use and execute all the premises, according to the tenour and effect of the said Letters Patents, any matter or cause to the contrary notwithstanding.

And afterwards the said Queen by her Letters Patents under the great Seal of *England*, bearing date the ninth day of *December*, in the six and twentieth year of her Reign, according to the tenour of the said Act, did authorize the
Archbishop

Archbishop of *Canterbury*, the Bishop of *London*, and divers others, or any three or more of them, to enquire, amongst others, of the Statute of the first year of her Reign concerning the Book of Common Prayer; with this Clause also contained in the said Letters Patents, *vide. i. c.* Also we give and grant full power and authority to reform, redresse, order, correct and amend in all places of this Realm all Errors, Heresies, Schisms, Abuses, Contempts and Enormities Spirituall or Ecclesiasticall whatsoever, which by any Spirituall or Ecclesiasticall power, authority or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained or amended by Censures Ecclesiasticall, Deprivation, or otherwise, &c. And upon proof thereof had, and the offences aforesaid, or any of them, sufficiently proved against any person or persons, by Confession, lawful witness, or by any due manner, &c. That then you or three of you shall have full power and authority to order and award such punishment to every such offender, by Fine, Imprisonment, Censure of the Church, or otherwise, or by all or any of the said ways, and to take such order for the redresse of the same, as by your wisedomes and discretions shall be thought meet and convenient, as by the said Letters Patents more at large appeareth.

And further, they found the Statute of the first year of the Reign of the said Queen, by which it is enacted, That the offender against that Act concerning the Uniformity of Common Prayer, being thereof lawfully convicted, according to the Laws of the Realm, by Verdict of twelve men, or by his Confession, or by the notorious Evidence of the fact, should forfeit for the first offence the value of his Spirituall living for one whole year, and should suffer six months Imprisonment: for the second offence, to be committed after such Conviction, he should be deprived *ipso facto* of all his Spirituall livings: and for the third offence, to be committed after two Convictions as is aforesaid, he should be deprived of all his Ecclesiasticall livings, and be imprisoned during his life. And that the said *Robert Candrey* before the time of the trespass supposed was deprived of his said

Bene-

Benefice before the said High Commissioners, as well for that he had preached against the said Book of Common Prayer, as also for that he refused to celebrate Divine Service according to the said Book, and shewed particularly wherein: Which said Sentence of Deprivation was given by the Bishop of London, *cum assensu A. B. C. D. &c. collegarum suorum*. And the Jury concluded their Verdict, That if the said Deprivation were not warranted by Law, but void, then they found the Defendant guilty of the trespass: And if the Deprivation were not void in Law, then they found the Defendant not guilty.

And this Case was solemnly and oftentimes debated at Barre by the Counsel of either party, and at the Bench by the Judges; and after great and long deliberation and consultation had with the rest of the Judges, was in the Term of S. Hillary, in the 37. year of the said Queen adjudged. And it was argued by the Counsel of the Plaintiff, that the said Deprivation was void for 4 causes.

The objections
of the
counsel of the
Plaintiff.

I.

First, The said Book of Common Prayer being authorized and commanded to be observed by the said Act of the first year of the Queen, upon the forfeitures and punishments therein comprised, the offence of the Plaintiff is against that Act; for that Act onely doth command the observation of the said Book, and inflicteth punishments in severall degrees for depraving or not observing of the same: and consequently, if the offence be against that Act, the Plaintiff ought to have been proceeded withall and punished according to the same. And it was said, that the said Act was an Act of great moderation and equity, for the offender for his first offence should not be *ipso facto* deprived, but should onely lose the profits of his Ecclesiasticall livings for one year, and suffer Imprisonment for six months, to the end that such as were froward might have a time to repent, and the well-minded a time to consent. And such care had the Act of the offenders in this behalf, as if they committed one offence, and then another, and after the second many more; yet should not the offender be deprived for any of the latter offences, unless he had been first judicially convicted of record

cord by verdict of 12 men, or by confession, or notorious evidence of the fact: So as the second offence, for which he must be deprived by the said Act, must be done and committed after such a judiciall and solemn Conviction and punishment, according to the said Act: And then if such an open punishment and infliction should not give him understanding, and open his heart to repent, then, upon a like Conviction, for a second offence, to be committed after such a Conviction, Deprivation should follow. But in the case now in question, *Candrey* the Plaintiff was deprived from his said Parsonage of *South-Luffenham* for his said first offence, being never convented or convicted for any such offence before. And therefore it was concluded for this first point, That the said High Commissioners had not pursued the form and order prescribed by the said Act; & *non observata forma, infertur annullatio Actus*; and consequently the Deprivation of the Plaintiff is void, and therefore Judgement ought to be given for him. And it was said by the Plaintiff's Counsell, by way of anticipation, That albeit there was a Proviso in the same Act for Archbishops, Bishops, and their Chancellors, Commissaries, Archdeacons, and other Ordinaries, having peculiar Jurisdiction; yet that did not give any strength to the said Deprivation, for two causes. First, that the Commissioners by force of the said Act of 1 *Eliz.* and of the said Letters Patents, are not within the said Proviso, but onely Archbishops and Bishops, their Chancellors, Commissaries, &c. in respect of their ordinary Jurisdiction. 2. Admitting it should extend to the said High Commissioners, yet ought they to proceed according to the form and order of the said Act, for an offence done against that Act.

Secondly, it was objected by the Counsel of the Plaintiff, That *Candrey* the Plaintiff was not deprived either by the verdict of 12 men, or by confession, or by the notorious evidence of the fact, but by default in respect he appeared not, being duely precognized or warned; which case, as it was objected, was *Causa omissa, & oblivioni datur*, and not within the said Act. 2.

G

Thirdly,

3.

Thirdly, it was objected on the behalf of the Plaintiff, That the said Sentence given by the said High Commissioners was utterly void, for that they or any 3 or more of them having authority by force of the said Act, and of the said Letters Patents under the great Seal, ought to joyn in the Sentence, and that one alone with the consent of 2 or more of the other Commissioners cannot give a Sentence, for that every Commissioner hath equal authority, and by the said Letters Patents three or more must give the Sentence with consent of others: and such a Judgement given by any Commissioners of Oyer and Terminer, or other Commissioners or Judges of the Common Law, were utterly void and of none effect.

4.

Fourthly, and lastly, it was objected, That the said Commissioners were not nominated and appointed according to the said Act; for the Jurisdiction and power given by the said Act to the Crown, is, to name such Commissioners as be natural-born Subjects, and it doth not appear by the said special verdict that the said Commissioners were natural-born subjects: And albeit the Judges as private men in their particular knowledge did know them to be natural-born subjects; yet they being Judges of record, ought onely to see with Judicial eyes, and to take knowledge of no more then doth appear to them within the Record; for upon that, and not upon private knowledge out of the Record, they onely must give their Judgement, and upon that Record enter their Judgement also of record. And seeing that the said Queen had, as it was said by the Plaintiff's Counsel, Ecclesiastical Jurisdiction by the said Act of Parliament, and by the same power was given unto her to name Ecclesiastical Commissioners; she of necessity must make her nomination according to the said Act, having no other power, as was objected, but by the said Act. And seeing it was not specially found that they were natural-born subjects, & *de non apparentibus & non existentibus eadem est ratio*; for this cause also the said Sentence of Deprivation was void, as given by Commissioners not warranted by the said Act.

Asto the first and second Objections, both being grounded

ded upon the said Act of Parliament, it was resolved by the whole Court, that notwithstanding these two Objections, the Sentence was not to be impeached for either of them, and that for three causes. First, for that the said Act concerning the Uniformity of Common Prayer being in the affirmative, doth not abrogate or take away the Jurisdiction Ecclesiasticall, unless words in the negative had been added, as, *and not otherwise, or in no other manner or form, or to the like effect.* And this appeareth by the general rule of all our Books, as it appeareth in 46 E.3.4. 47 E.3.10. 20 H.6.11. 36 H.6.3. 3 E.4.27. 3 H.7.1. 14 H.7.10. 15 H.7.16. 33 H.8. Dyer 50. 4 Mar. Dyer 135. *Stradlings case. Pl. Com. 207. &c.* 2. The Ecclesiasticall Law and the Temporal Law have several proceedings, and to several ends: the one being Temporal, to inflict punishment upon the body, lands, or goods; the other being Spiritual, *pro salute Anima*: the one to punish the outward man, the other to reform the inward. And this appeareth in 12 H.7.22. & 10 E.4.10. &c. Then both these distinct and several Jurisdictions consist and stand well together, and do joyn in this, to have the whole man inwardly and outwardly reformed. 3. The Proviso in the said Act doth make this question without question, for by it is provided, ordained and enacted by the Authority aforesaid, That all and singular Archbishops and Bishops, and every of their Chancellors, Commissaries, Archdeacons, and other Ordinaries, having any peculiar Ecclesiasticall Jurisdiction, should have full power and authority by virtue of that Act, as well to enquire in their Visitations, Synods, and elsewhere within their Jurisdiction, as at any other time and place to take informations of all and every the things above mentioned, done, committed or perpetrated within the limits of their Jurisdictions and authority, and punish the same by Admonition, Excommunication, Sequestration, or Deprivation, and other Censures and Processe, in like form as heretofore had been used in like cases by the Queen's Ecclesiasticall Laws, as by the said Act appeareth. So as seeing, if that Act had never inflicted any punishment

The resolutions of the Court to the 1. and 2.

for depraving or not observing the Book of Common Prayer, yet the same being allowed and commanded to be observed for uniformity of Common Prayer, and the unity and peace of the Church; the Ecclesiasticall Judge may deprive such Parson, Vicar, &c. as shall deprave or not observe the said Book, as well for the first offence, as he might have done by the Censures of the Church and the Ecclesiasticall Laws, if no form of punishment had been inflicted by that Act. And this doth evidently appear by the said Proviso: For thereby, notwithstanding any thing in that Act contained, they may punish such offenders by Admonition, Excommunication, Sequestration, or Deprivation, and other Censures and Proceſſe, in like form as heretofore hath been used in like cases by the Queen's Ecclesiasticall Laws, and are not bound to pursue the form prescribed by the said Act, which is to punish the offender according to the Temporal Law. And it was resolved, That if the Jurisdiction of the Archbishops and Bishops, and their Chancellors, Commissaries, Archdeacons, and other Ordinaries, having any peculiar Ecclesiasticall Jurisdiction, were provided for by the said Act, *a fortiori* the High Commissioners, authorized by another Act in the same Parliament, were *tacite* provided for: *Quia cui licet quod majus est, non debet quod minus est non licere.*

To the 3.

As to the third Objection, it was also resolved by the whole Court, that the Sentence given by the Bishop, by the consent of his Collegues, was such as the Judges of the Common Law ought to allow to be given according to the Ecclesiasticall Laws: For seeing their authority is to proceed and give sentence in Ecclesiasticall causes according to the Ecclesiasticall Law, and they have given a Sentence in a cause Ecclesiasticall upon their proceedings by force of that Law; the Judges of the Common Law ought to give faith and credit to their Sentence, and to allow it to be done according to the Ecclesiasticall Law: For *cuiuslibet in sua arte perito est credendum.* And this is the common received opinion of all our Books, as appeareth 11 H.7.9. 34 H.6.14. &c. And in *Bunting and Leppingwells Case*, in the part of my

my Reports. And this is the usual form of all the Sentences in their Ecclesiasticall Courts. And this very Point, *Tr. 23 Regine Eliz.* in this Court, between *Cheyney* and *Frankwell*, all the matter being found, as this Case is, by speciall verdict, was adjudged.

As to the fourth Objection, *videlicet*, That the said Queen To the 4. had onely power by force of the said Act to nominate Commissioners for Ecclesiasticall causes, and therefore the foresaid Nomination not pursuing the authority given unto her by that Act should be void: Hereunto a threefold Answer was given, and resolved by the whole Court. 1. That they which were Commissioners, and had places of Judicature over the King's subjects, should be intended to be Subjects born, and not Aliens: But if in veritie they were Aliens, yet in respect of the general intendment to the contrary, it ought to be alledged and proved by the other party. For *Stabilitur presumptum donec probetur in contrarium*. 2. The Jurors have found that the Queen by her said Letters Patents did authorize them *secundum formam Statuti prædicti* and therefore it doth by necessary consequence amount to as much as if they had found they had been Subjects born: For if they were not Subjects born, they could not be authorized *secundum formam Statuti prædicti*. *Vide 11 H. 4. 4. 13 Eliz. Dyer fol.* And the rather, for that this is found by special verdict. 3. It was resolved, That the said Act of the first year of the said Queen concerning Ecclesiasticall Jurisdiction was not a Statute introductory of a new Law, but declaratory of the old, which appeareth as well by the Title of the said Act, *videlicet*, *An Act restoring to the Crown the ancient Jurisdiction over the State Ecclesiasticall and Spiritual, &c.* as also by the body of the Act in divers parts thereof. For that Act doth not annex any Jurisdiction to the Crown, but that which in truth was, or of right ought to be, by the ancient Laws of the Realm parcell of the King's Jurisdiction, and united to his Imperial Crown, and which lawfully had been, or might be, exercised within the Realm. The end of which Jurisdiction, and of all the proceeding thereupon, was, that all things might be done in causes Ecclesiasticall

to the pleasure of Almighty God, the increase of vertue, and the conservation of the peace and unity of this Realm, as by divers parts of the said Act appeareth. And therefore as by that Act no pretended Jurisdiction exercised within this Realm, being either ungodly or repugnant to the Prerogative or the ancient Law of the Crown of this Realm, was or could be restored to the same Crown, according to the ancient right and Law of the same: So if that Act of the first year of the said Queen had never been made, it was resolved by all the Judges, that the King or Queen of *England* for the time being may make such an Ecclesiasticall Commission as is before mentioned by the ancient Prerogative and Law of *England*. And therefore by the ancient Laws of this Realm, this Kingdome of *England* is an absolute Empire and Monarchy, consisting of one Head, which is the King, and of a Body politick, compact and compounded of many and almost infinite severall, and yet well-agreeing, members: All which the Law divideth into two severall parts, that is to say, *the Clergie, and the Laetie*, both of them next and immediately under God subje& and obedient to the Head. Also the Kingly Head of this politick Body is instituted and furnished with plenary and entire power, Prerogative and Jurisdiction, to render Justice and right to every part and member of this Body, of what estate, degree or calling soever, in all Causes, Ecclesiasticall or Temporal; otherwise he should not be a Head of the whole Body. And as in Temporal causes, the King by the mouth of the Judges in his Courts of Justice doth judge and determine the same by the temporal Laws of *England*: so in causes Ecclesiasticall and Spiritual, as namely, Blasphemy, Apostasie from Christianity, Heresies, Schisms, Ordering, Admissions, Institutions of Clerks, Celebration of Divine service, Rights of Matrimony, Divorces, general Bastardy, subtraction and right of Tithes, Oblations, Obventions, Dilapidations, Reparation of Churches, Probate of Testaments, Administrations, and accounts upon the same, Simony, Incests, Fornications, Adulteries, Solicitation of Chastity, Pentions, Procurations, Appeals in Ecclesiasticall

What causes
belong to the
Ecclesiasti-
call Court.

See Circumspede

agatis, 13 E.

1. W. 2. 13

E. 1. cap. 5.

versus finem.

Artic. cler. 9

E. 2. 15 E. 3.

c. 6. 31 E. 3.

clesiasticall causes, Commutation of penance, and others, (the conuſance whereof belong not to the Common Law^s of *England*) the ſame are to be determined and decided by Eccleſiaſticall Judges, according to the King's Eccleſiaſtical Laws of this Realm. For as the *Romans*, fetching diuers Laws from *Athens*, yet being approved and allowed by the State there, called them notwithstanding *Jus Civile Romanorum*; and as the *Normans*, borrowing all or moſt of their Laws from *England*, yet baptized them by the name of the Laws or Cuſtomes of *Normandy*: So albeit the Kings of *England* derived their Eccleſiaſticall Laws from others, yet ſo many as were proved, approved and allowed here, by and with a general conſent, are aptly and rightly called *The King's Eccleſiaſticall Laws of England*; which whoſoever ſhall deny, he denieth that the King hath full and plenary power to deliver Juſtice in all cauſes to all his ſubjects, or to puniſh all crimes and offences within his Kingdome; for that, as before it appeareth, the deciding of matters ſo many, and of ſo great importance, are not within the conſuſance of the Common Laws: and conſequently, that the King is no compleat Monarch, nor Head of the whole and entire Body of the Realm. But to confirm thoſe that hold the truth, to ſatisfy ſuch as being not iſtructed know not the ancient and modern Laws and Cuſtomes of *England*, every man being perſwaded as he is taught; theſe few demonſtrative proofs out of the Laws of *England*, in ſtead of many, in order, & ſerie temporum, are here added.

K Enulphus Rex, &c. per Literas ſuas patentes, conſilio & conſenſu Episcoporum & Senatorum gentis ſue, largitus fuit Monasterio de Abnidon in Comitatu Bark. ac cuidam Rucnio tunc Abbati Monasterii, &c. quandam ruri ſui portionem, id eſt, quindecim Manſus, in loco qui à Ruricolis tunc nuncupabatur Culnam, cum omnibus utilitatibus ad eandem pertinentibus, tam in magnis quam in modicis rebus, in æternam hereditatem. Et quod prædictus Rucnius, &c. ab omni Episcopali Jure in ſempiternum eſſe quietus, ut inhabitatores ejus nullius Episcopi aut ſuorum officialium jugo inde deprimantur, ſed in cunctis rerum eventibus & diſcuſſionibus

This King reigned an. Dom. 755. Stanford lib. 3. cap. 38. fol. 111. This charter was pleaded 1 H. 7. 23. 25.

Nota.

*Rex Edwin.
regnavit anno
Dom. 955.*

*discussionibus causarum Abbatis Monasterii predicti decreto subji-
ciantur. Ita quodd, &c.* As by the said Charter pleaded in
1 Henr. 7. and vouched by *Stamford*, at large appeareth:
which Charter, granted above 850 years sithence, was after
confirmed per *Edwinum Britannie Anglorum Regem & Monar-
cham*. By which it appeareth that the King by his Charter
made in Parliament (for it appeareth to be made by the
counsell and consent of his Bishops and Senators of his
Kingdome which were assembled in Parliament) did dis-
charge and exempt the said Abbot from the Jurisdiction of
the Bishop, &c. and by the same Charter did grant to the
said Abbot Ecclesiasticall Jurisdiction within his said Abbey:
which Ecclesiasticall Jurisdiction being derived from the
Crown, continued untill the Dissolution of the said Abbey in
the Reign of King *Henry the Eighth*.

In the Reign of King Edward the Confessor.

*St K. Edw.
laws, ca. 19.*

THe King, who is the Vicar of the Highest King, is ordai-
ned to this end, that he should govern and rule the
Kingdome and people of the Land, and above all things the
Holy Church, and that he defend the same from wrong-
doers, and destroy and root out workers of mischief. And
this shall suffice for many before the Conquest.

In the Reign of King William the First.

*7 E. 3. tit.
Quare Impe-
dit 19.*

IT is agreed that no man can make any Appropriation of
any Church having Cure of Souls, being a thing Ecclesi-
astical, and to be made to some person Ecclesiastical, but
he that hath Ecclesiastical Jurisdiction: But *William* the
First, of himself, without any other, (as King of *England*,)
made Appropriation of Churches with Cure to Ecclesiastical
persons: Wherefore it followeth that he had Ecclesiastical
Jurisdiction.

In

In the Reign of King Henry the First.

HENRY by the Grace of God King of England, Duke of Normans, To all Archbishops, Bishops, Abbots, Earls, Barons, and to all Christians as well present as to come, &c. We do ordain, as well in regard of Ecclesiasticall as Royall power, that whensoever the Abbot of *Reading* shall die, that all the possession of the Monastery, wheresoever it is, do remain entire and free, with all the rights and customs thereof, in the hands and disposition of the Prior and Monks of the Chapter of *Reading*. We do therefore ordain and establish this Ordinance to be observed for ever : because the Abbot of *Reading* hath no Revenues proper and peculiar to himself, but common with his brethren; whosoever by God's will shall be appointed Abbot in this place by Canonick election, may not dispend the Alms of the Abbey by ill usage with his secular kinsmen, or any other, but in entertaining the poor Pilgrims and Strangers, and that he have a care not to give out the Rent-lands in fee, neither that he make any Servitors or Souldiers but in the Sacred garment of Christ; wherein let him be advisedly provident he entertain not young ones, but that he entertain men of ripe age or discreet, as well Clerks as Lay-men.

The Charter of H. 1. Founder of the Abbey of Reading, in the 26. year of his reign, and in the year of our Lord 1125.

In the Reign of King Henry the Third.

IN all the time of H. 3. and his Progenitors Kings of England, and ever sithence, if any man did sue afore any Judge Ecclesiasticall within the Realm for any thing whereof that Court by allowance and custome had not lawful consufance, the King did ever by his Writ under his great Seal prohibit them to proceed: And if the suggestion made to the King, whereupon the Prohibition was grounded, were after found untrue, then the King by his Writ of Consultation under his great Seal did allow and permit them

*2 H. 3. Tit. Prohibition
13. 4 H. 3. ibidem 15.
15 H. 3. Tit. Prohib. 22.
Register fol.*

them to proceed. Also, in all the Reign of *H. 3.* and his Progenitors Kings of *England*, and ever since, if any issue were joyne upon the loyalty of Marriage, general Bastardy, or such like, the King did ever write to the Bishop of that Diocese, as mediate Officer and Minister to his Court, to certify the loyalty of Marriage, Bastardy, or such like: all which do apparently prove, that those Ecclesiastical Courts were under the King's Jurisdiction and commandment; and that one of the Courts were so necessarily incident to the other, as the one without the other could not deliver Justice to the parties, as well in these particular cases, as in a number of cases before specified, whereof the King's Ecclesiasticall Court hath Jurisdiction. Now to command and to be obeyed belong to Sovereign and Supreme Government.

*The Statute
of Merton an.
20 H. 3.*

By the ancient Canons and Decrees of the Church of *Rome*, the issue born before solemnization of marriage is as lawfully inheritable (marriage following) as the issue born after marriage: But this was never allowed or appointed in *England*, and therefore was never of any force here. And this appeareth by the Statute of *Merton*, made in the 20. year of King *Henry* the 3.

To the King's Writ of Bastardy, whether one being born afore matrimony may inherit in like manner as he that is born after matrimony, all the Bishops answered, that they would not nor could not answer to it, because it was directly against the common order of the Church. And all the Bishops instanted the Lords, that they would consent, that all such as were born afore matrimony should be legitimate, as well as they that be born within matrimony, as to the succession of inheritance, forso much as the Church accepteth such to be legitimate. And all the Earls and Barons with one voice answered, We will not change the Laws of *England* which hitherto have been used and approved.

In

In the Reign of King Edward the First.

IN the Reign of King *Edward* the First, a Subject brought in a Bull of Excommunication against another Subject of this Realm, and published it to the Lord Treasurer of *England*: and this was by the ancient Common Law of *England* adjudged Treason against the King, his Crown and Dignity; for the which the offender should have been drawn and hanged, but at the great instance of the Chancellour and Treasurer he was onely abjured the Realm for ever.

Vide 30 E. 3. Li. 1. ff. 19. Brook 111. Premunire pl. 10.

Note, this was by the common Law of England before any Statute made.

The said King *Edward* the 1. presented his Clerk to a Benefice within the Province of *York*, who was refused by the Archbishop, for that the Pope by way of Provision had conferred it on another. The King thereupon brought a *Quare non admisit*. The Archbishop pleaded that the Bishop of *Rome* had long time before provided to the said Church, as one having supreme Authority in that case, and that he durst not nor had power to put him out, which was by the Pope's Bull in possession. For which his high Contempt against the King, his Crown and Dignity, in refusing to execute his Sovereign's Commandment, fearing to doe it against the Pope's Provision, by judgement of the Common Law the Lands of his whole Bishoprick were seized into the King's hands, and lost during his life. Which Judgement was before any Statute or Act of Parliament was made in that case. And there it is said, that for the like offence the Archbishop of *Canterbury* had been in worse case by the judgement of the Sages of the Law, then to be punished for a Contempt, if the King had not extended grace and favour to him.

19 E. 3. 111. Quare non admisit 7. Vide 39 E. 3. 20.

Note.

Concerning men twice married, (called *Bigamy*) whom the Bishop of *Rome* by a Constitution made at the Council of *Lions* hath excluded from all priviledge of Clergy, whereupon certain Prelates (when such persons have been attainted for Felons) have prayed for to have them delivered as Clerks which were made *Bigamy* before the same Constitution;

The Statute of Bigamie, anno 4 E. 1. Observe how the King by advice of his Council (that is, by authori-

ty of Parlia-
ment expoun-
ded how the
said Council
should be un-
derstood, and
in what sense
it should be
received and
allowed here.

Statutum de
anno 25 E. 1.
Carlisle. Vide
20 E. 3. tit.
Ejssoin 24.

Nota: The
first attempt
was to usurp
upon such Ec-
clesiasticall
things as per-
tained to the
Clergy of
England, who
at that time
stood in great
awe of the
Church of
Rome.

stitution; It is agreed and declared before the King and his Council, that the same Constitution shall be understood in this wise, That whether they were Bigamy before the same Constitution or after, they shall not from henceforth be delivered to the Prelates, but Justice shall be executed upon them as upon other Lay people.

In an Act made at a Parliament holden at *Carlisle* in the 25. year of the said King *Ed. the First*, it is declared, That the Holy Church of *England* was founded in the state of Prelacy within this Realm of *England* by the King and his Progenitors, &c. for them to inform the people in the Law of God, and to keep Hospitality, give Alms, and doe other works of Charity, &c. And the said Kings in times past were wont to have the Advice and Counsel, for the safeguard of the Realm, when they had need, of such Prelates and Clerks so advanced. The Bishop of *Rome*, usurping the Seigniories of such Benefices, did give and grant the same Benefices to Aliens which did never dwell in *England*, and to Cardinals which might not dwell here, &c. in adnullation of the state of the Holy Church of *England*, disherison of the King, Earls, Barons and other Nobles of the Realm, and in offence and destruction of the Laws and Rites of this Realm, and against the good disposition and will of the first Founders. It was enacted by the King, by assent of all the Lords and Comminalty in full Parliament, That the said Oppressions, Grievances and Damgages in this Realm from thenceforth should not be suffered, as more at large appeareth by that Act.

In the Reign of King Edward the Second.

The Statute
of 9 E. 2. Ar-
tic. Cleri cap.
16.
See the Ordi-
nance of Cir-
cumspetè
agatis an.

Albeit by the Ordinance of *Circumspetè agatis*, made in the 13. year of *Edm. 1.* and by general allowance and usage, the Ecclesiasticall Court held plea of Tithes, Obventions, Oblations, Mortuaries, Redemptions of penance, Laying of violent hands upon a Clerk, Defamations, &c. yet did not the Clergy think themselves assured nor quiet

quiet from Prohibitions purchased by Subjects, untill that King Edw. the 2. by his Letters Patents under the great Seal, in and by consent of Parliament, upon the Petitions of the Clergy, had granted unto them to have Jurisdiction in those cases. The King in a Parliament holden in the 9. year of his Reign, after particular Answers made to their Petitions concerning the matters abovesaid, doth grant and give his Royall Assent in these words.

"We desiring as much as of right we may to provide for
"the state of the Church of *England*, and the tranquillity
"and quiet of the Prelates of the said Clergy, to the honour
"of God, and the amendment of the state of the said
"Church, and of the Prelates and Clergy, ratifying and
"approving all and singular the said Answers which appear
"in the said Act, and all and singular things in the said
"Answers contained, We do for us and our Heirs, grant
"and command that the same be inviolably kept for ever:
"Willing and granting for us and our Heirs, That the said
"Prelates and Clergy, and their Successors for ever, do ex-
"ercise Ecclesiasticall Jurisdiction in the premisses accor-
"ding to the tenour of the said Answer.

13 E. 1. so
this effect.
By this Sta-
tute of 9 Ed.
2. and the
Statutes of
15 E. 3. cap. 6.
31 E. 3. cap.
11. and by o-
ther Statutes
heretofore
mentioned,
the Juris-
diction of the
Ecclesiasti-
call Court
is allowed
and warran-
ted by consent
of Parliament
in all cases
wherein they
now have
Jurisdiction,
so as these
Laws may be
justly called
the King's
Ecclesiasti-
call Laws, or
the Ecclesia-
sticall Laws
of England.
16 E. 3. Tit.
Excom. 4.

In the Reign of King Edward the Third.

AN Excommunication by the Archbishop, albeit it be disannulled by the Pope or his Legates, is to be allowed; neither ought the Judges to give any allowance of any such Sentence of the Pope or his Legate.

It is often resolved that all the Bishopricks within *Eng-land* were founded by the King's Progenitors, and therefore the Advowsons of them all belong to the King, and at the first they were donative. And that if an Incumbent of any Church with Cure die, if the Patron present not within 6 months, the Bishop of that Diocese ought to collate, to the end the Cure may not be destitute of a Pastor: If he be negligent by the space of 6 months, the Metropolitan of that Diocese shall confer one to that Church: And if he also leave

*In the Reign
of E. 3.*

leave the Church destitute by the space of 6 months, then the Common Law giveth to the King, as to the Supreme within his own Kingdome, and not to the Bishop of *Rome*, power to provide a competent Pastor for that Church.

17 E.3.23.

The King may not onely exempt any Ecclesiasticall person from the Jurisdiction of the Ordinary, but may grant unto him Episcopall Jurisdiction. As thus it appeareth there the King had done of ancient time to the Archdeacon of *Richmond*.

20 E.3. Ex-
com.9. 16 E.
3. tit. Bre.

660. 21 E.3.

60. 6 H.7.

14. Fit. Na.

Br.

20 E.3. Tit.
Excom.6.

21 E.3. fol.

40.

All Religious or Ecclesiasticall Houses whereof the King was Founder are by the King exempt from ordinary Jurisdiction, and onely visitable and corrigible by the King's Ecclesiasticall Commission.

The Abbot of *Bury* in *Suffolk* was exempted from Episcopall Jurisdiction by the King's Charter.

The King presented to a Benefice, and his Presentee was disturbed by one that had obtained Bulls from *Rome*; for which offence he was condemned to perpetuall imprisonment, &c.

22 E.3. lib.
Ass. p. 75.

Tithes arising in places out of any Parish the King shall have, for that he, having the Supreme Ecclesiasticall Jurisdiction, is bound to provide a sufficient Pastor that shall have the Cure of souls of that place which is not within any Parish. And by the Common Laws of *England* it is evident that no man, unlesse he be Ecclesiasticall, or have Ecclesiasticall Jurisdiction, can have inheritance of Tithes.

27 E.3. fol.
84. Fit. Na.
Br. fol. 34.

The King shall present to his free Chappels (in default of the Dean) by Lapse in respect of his Supreme Ecclesiasticall Jurisdiction. And *Fitzherbert* saith, that the King in that case doth present by Lapse as Ordinarie.

30. E.3. lib.
Ass. p. 19.

12 H.4. 16.

14 H.4. 14.

8 H.6. fol. 3.

35 H.6. 42.

28 H.6. 1.

7 E.4. 14.

12 E.4. 16.

An Excommunication under the Pope's Bull is of no force to disable any man within *England*: And the Judges said, that he that pleadeth such Bulls, though they concern the Excommunication of a Subject, were in a hard case, if the King would extend his justice against him. If Excommunication, being the extreme and final end of any Suit in the Court at *Rome*, be not to be allowed within *England*, it confe-

consequently followeth, that by the ancient Common Laws of England, no Suit for any Cause, though it be spiritual, rising within this Realm, ought to be determined in the Court of Rome, *Quia frustra expectatur eventus, cujus effectus nullus sequitur*: And that the Bishops of England are the immediate Officers and Ministers to the King's Courts.

Fit. Na. Br. fol. 64. F. Vide 9 E. 4. fol. 2. Hereafter fol. 11. It ought to be determined in the ecclesiasticall Courts in England. 31 E. 3. Tit. Excom. 6.

In an Attachment upon a Prohibition, the Defendant pleaded the Pope's Bull of Excommunication of the Plaintiff. The Judges demanded of the Defendant, if he had not the Certificate of some Bishop within the Realm testifying this Excommunication. To whom the Counsell of the Defendant answered, that he had not, neither was it as they supposed necessarie; for that the Bulls of the Pope under Lead were notorious enough. But it was adjudged that they were not sufficient, for that the Court ought not to have regard to any Excommunication out of the Realm: And therefore by the rule of the Court the Plaintiff was not thereby disabled.

Reges sacro oleo uncti sunt Spiritualis Jurisdictionis capaces.

Where a Prior is the King's debtor, and ought to have Tithes of another Spiritual person, he may chuse either to sue for subtraction of his Tithes in the Ecclesiastical Court, or in the Exchequer, and yet the persons and matter also were Ecclesiastical. For seeing the matter by a mean concerneth the King, he may sue for them in the Exchequer as well as in the Ecclesiastical Court, and there shall the right of Tithes be determined. And *Fitzherbert* in his *Nabre. fol. 30.* holdeth, that before the Statute of 18 E. 3. cap. 7. right of Tithes were determinable at the Temporal Courts at the election of the party; and by that Statute assigned to be determined in the Ecclesiastical Court, and the Temporal Court excluded thereof. And the Courts of divers Mannors of the King's, and of other Lords, in ancient times had the Probates of last Wills and Testaments. And it appeareth by 11 H. 7. fol. 12. that Probate of Testaments did not appertain to the Ecclesiastical Court, but that of late time they were determinable there.

33 E. 3. lit. Ayde de Roy 103. 38 Aff. pl. 20.

See the Statute of 15 E. 3. cap. 6. 31 E. 3. cap. 11.

So as of such Causes, and in such manner as the Kings of the

the Realm by general consent and allowance have assigned to their Ecclesiasticall Courts, they have Jurisdiction by force of such allowance.

38 Lib. Ass.
pl. 22.

The King did by his Charter translate Canons Secular into Regular and Religious persons, which he did by his Ecclesiasticall Jurisdiction, and could not doe it unlesse he had Jurisdiction Ecclesiasticall.

45 E. 3. Tit.
Premun. 6.

The Abbot of *Waltham* died in the 45. year of E. 3. and one *Nicholas Morris* was elected Abbot, who, for that the Abbey was exempt from ordinary Jurisdiction, sent to *Rome* to be confirmed by the Pope: And because the Pope by his Constitutions had reserved all such Collations to himself, he did recite by his Bull, that he, having no regard to the Election of the said *Nicholas*, gave to him the said Abbey, and the Spiritualties and Temporalties belonging to the same, of his spirituall grace, and at the request (as he feigned) of the King of *England*. This Bull was read and considered of in Councill, that is, before all the Judges of *England*: and it was resolved by them all, that this Bull was against the Laws of *England*, and that the Abbot for obtaining the same was fallen into the King's mercy: whereupon all his possessions were seised into the King's hands, as more at large by the said Case appeareth.

49 E. 3. Lib.
Ass. pl. 8.

Where the Abbot of *Westminster* had a Prior and Convent who were Regular and mort in law, yet the King by his Charter did divide that Corporation, and made the Prior and Convent a distinct and capable Body to sue and be sued by themselves.

Statut. de
25 E. 3. de
Provisoriis.

At a Parliament holden in the 25. year of King *Edward* the Third, it was enacted by consent of the whole Parliament, That as well they that obtained Provisions from *Rome*, as they that put them in execution, should be out of the King's protection; and that a man might doe with them as with the enemies of the King; And he that offendeth against such Provisors in body, goods, or other possessions, should be excused against all people, and should never be impeached or grieved for the same. By which Law every man might lawfully kill such an Offendor, as a common

mon enemy against the King and his Countrey, so hainous were such offences then holden.

Afterwards, in the same 25. year of King *Edward* the Third, it was in open Parliament by the grievous complaints of all the Commons of this Realm shewed, that the Grievances and Mischiefs aforesaid did daily abound, to the great dammage and destruction of all this Realm, more then ever before. viz. That of late the Bishop of *Rome*, by procurement of Clerks and otherwise, had reserved and did daily reserve to his Collation, generally and specially, as well Archbishopricks, Abbies and Priories, as all other Dignities and other Benefices of *England*, which were of the Advowrie of people of Holy Church, and gave the same as well to Aliens as to Natives, and did take of all such Benefices the First-fruits, and many other Profits; and a great part of the Treasure of the Realm was carried away and dispended out of the Realm by the purchasers of such graces: and also by such privy Reservations, many Clerks, advanced in the Realm by their true Patrons, which peaceably had holden their Advancements by long time, were suddenly put out. Whereupon the said Commons did pray their said Sovereign Lord the King, that sithence the right of the Crown of *England* and the Law of the said Realm was such, that upon the mischiefs and dammages which happened to his Realm, he ought and was bound of the accord of his said people thereof to provide remedie and law, for the avoiding the mischiefs and dammage which thereof came, that it might please him thereupon to ordain remedy. The said King *Ed.* the 3. seeing the mischiefs and dammage before named, and having regard to the Statute made in the time of his Grandfather King *Ed.* 1. and to the causes contained in the same, which Statute holdeth always his force, and was never defeated nor adnulled in any point; and forasmuch as he was bound by his Oath to see the same to be kept as a Law of this Realm, though that by sufferance and negligence it had been sithence attempted to the contrary; also having regard to the grievous complaints made to him by his people in divers his Parliaments holden heretofore, willing to ordain remedy for the great dammage and mischiefs which

Statut. de
25 E.3.

Note.

Note.

had

Vide 10 E.3.
fol.1. & 2.

had happened, and daily did happen, to the Church of *England* by the said cause; by the assent of all the Great men and the Commonalty of the said Realm, to the honour of God, and profit of the said Church of *England*, and of all his Realm, did order and establish, That the free Election of Archbishops, Bishops, and all other Dignities and Benefices electory in *England*, should hold from thenceforth in the manner as they were granted by the King's Progenitors, and founded by the Ancestors of other Lords: And that all Prelates, and other people of Holy Church, which had Advowsons of any Benefices of the King's gift, or of any of his Progenitors, or of other Lords and Donors, to doe Divine Service and other charges thereto pertaining, should have their Collations and Presentments freely, in the manner as they were infeofed by their Donors: And in case that Reservation, Collation or Provision be made by the Court of *Rome* of any Archbishoprick, Bishoprick, Dignity, or other Benefice, in disturbance of the Elections, Collations or Presentations afore named, That at the time of the Avoidance, that such Reservations, Collations and Provisions ought to take effect, the said King *Edward* the Third and his Heirs should have and enjoy the same Collations to the Archbishopricks and other Dignities elective, which be of his Avowry, as his Progenitors did before that free Election was granted, sithence that the Elections were first granted by the King's Progenitors upon a certain form and condition, as to demand licence of the King to chuse, and after the Election to have his Royall Assent, and not in other manner: which conditions not kept, the King ought by reason to resort to the first nature, as by the said Act more at large appeareth.

Statutum de
27 E.3.

In the 27. year of the Reign of the same King it was grievously complained to the King in a Parliament then holden, by the Great men and Commons of the Realm, how that divers of the people were and had been drawn out of the Realm to answer to things whereof the consufance pertained to the King's Court, and also that the Judgments given in the same Court were impeached in other Courts,
in

in prejudice and disherison of the King and of his Crown, and of all the people of his said Realm, and to the undoing and destruction of the Common Law of the same Realm at all times used. Whereupon good deliberation being had with the Great men and others of his said Council, it was assented and accorded by the King and the Great men and Commons aforesaid, That all the people of the King's allegiance, of what condition that they be, which should draw any out of the Realm, for plea whereof the consufance pertained to the King's Court, or for things whereof Judgments were given in the King's Court, or which did sue in any other Court, to defeat or impeach the Judgments given in the King's Courts, should incur the danger of *Premunire*, as by the said Act appeareth.

To nourish love, peace and concord between Holy Church and the Realm, and to appease and cease the great hurt and perils and importable losses and grievances that had been done and happened in times past, and that should happen hereafter, if the thing from thenceforth be suffered to pass, because of personal Citations, and other that be passed before this time, and commonly did passe from day to day out of the Court of *Rome*, by feigned and false Suggestions and Propositions against all manner of persons of the Realm, upon Causes whose cognifance and final discussing pertained unto the King and his Royal Court; and also of Impetrations and Provisions of Benefices and Offices of Holy Church pertaining to the gift, presentation, donation and disposition of the King, and other Lay Patrons of this Realm, as of Churches, Chappels, and other Benefices appropriated to Cathedrall Churches, Abbies, Priories, Chauntries, Hospitalls, and other poor Houses, and of other Dignities, Offices and Benefices occupied in times past, and presented by divers and notable persons of the said Realm: for which causes, and dispensing whereof, the good ancient Laws, Usages, Customes and Franchises of the said Realm had been and were greatly appaired, blemished and confounded, the Crown of their Sovereign Lord the King minished, and his Person falsely defamed, his Treasury and Riches of the

Statut. de
28 E. 3. cap.
1. & 2.

Statut. de
38 E.3. ca 3.

Realm carried away, the inhabitants and subjects of the Realm impoverished and troubled, the Benefices of Holy Church wasted and destroyed, Divine Service, Hospitalities, Alms-deeds and works of charity withdrawn and set apart, the Commons and Subjects of the Realm in body and goods consumed: The King at his Parliament holden at *Westminster* in the *Vis* of *S. Hillary*, the 38. year of his Reign, having regard to the quietness of his people, which he chiefly desired to sustain in tranquillity and peace, to govern according to the Laws, Usages and Franchises of his Land, as he was bound by his Oath made at his Coronation, following the ways of his Progenitors, which for their time made certain good Ordinances and Provisions against the said Grievances and Périls; which Ordinances and Provisions, and all the other made in his time, and especially in the 25. and 27. years of his Reign, the King by the assent and expresse will and concord of the Dukes, Earls, Barons, and the Commons of this Realm, and of all other whom these things touched, by good and meet deliberation and advisement, did approve, accept, and confirm, as by the said Act appeareth.

But those which should execute the said good Laws against such capitall Offendors were cursed, reprov'd and defamed, by such as maintained the usurped Jurisdiction of the Bishop of *Rome*: Against which an especial Act of Parliament was made by the King and his whole Realm, prohibiting thereby such Defamations and Reproofs.

In the Reign of King Richard the Second.

12 R.2. tit.
Jurisdiction
18.

Against an Incumbent of a Church in *England* another such a Provision in the Court of *Rome*, and there pursued untill he recovereth the Church against the Incumbent, and after brought an Action of Account against him, as receiver of divers sums of money, (which in truth were the Oblations and Offerings which the Incumbent had received.)

ceived.) And the whole Court was of opinion against the Plaintiff, and thereupon he became non-suit.

It is declared by that Parliament, that the Crown of *England* hath been so free at all times, that it hath been in subjection to no Realm, but immediately subject to God, and none other; and that the same ought not in any thing touching the Regalty of the same Crown be submitted to the Bishop of *Rome*, nor the Laws and Statutes of this Realm by him frustrated or defeated at his will, to the perpetuall destruction of the King, his Sovereignty, Crown and Regalty, and of all his Realm. And the Commons in that Parliament affirmed, that the things attempted by the Bishop of *Rome* be clearly against the King's Crown and his Regalty, used and approved in the time of all his Progenitors. Wherefore they and all the liege Commons of the same Realm would stand with the King and his said Crown, and his Regalty, in the cases aforesaid, and in all other cases attempted against him, his Crown and his Regalty, in all points to live and to die. And moreover they did pray the King, and him required by way of justice, that he would examine all the Lords in the Parliament, as well Spiritual as Temporal, severally, and all the States of the Parliament, how they thought of the cases aforesaid, which were so openly against the King's Crown, and in derogation of his Regalty, and how they would stand in the same cases with the King, in upholding the Rights of the said Crown and Regalty. Whereupon the Lords Temporal so demanded did answer every one by himself, That the cases aforesaid were clearly in derogation of the King's Crown and of his Regalty, as it was well known, and had been of long time known; and that they would stand with the same Crown and Regalty in those cases especially, and in all other cases which should be attempted against the said Crown and Regalty, in all points, with all their power. And moreover then was demanded of the Lords Spiritual there being, and the Procurators of others being absent, their advice and will in all those cases: which Lords, that is to say, the Archbishops, Bishops and other Prelates, being

Statutum de
16 R. 2. cap.
5.

Note.

in the Parliament severally examined, making protestations that it was not their mind to deny or affirm that the Bishop of *Rome* might not excommunicate Bishops, nor that he might make Translation of Prelates after the Law of Holy Church, answered and said, That if any Executions or Proseses in the King's Court, as before, were made by any, and censures of Excommunications be made against any Bishop of *England*, or any other of the King's liege people, for that they had made execution of such commandments; and that if any executions of such Translations be made of any Prelats of the same Realm, which Prelats were very profitable and necessary to the King and to his said Realm; or that his sage men of his Council without his assent and against his will be withdrawn and cloigned out of the Realm, so that the substance and Treasury of the Realm might be destroyed; that the same was against the King and his Crown, as it was contained in the Petition before named. And likewise the same Procurators, every one by himself examined upon the said matters, did answer and say in the name and for their Lords as the said Bishops had said and answered: And that the said Lords Spiritual would and ought to stand with the King in these cases, lawfully in maintaining of his Crown, and in all other cases touching his Crown and his Regalty, as they were bound by their Allegiance. Whereupon the King by the assent aforesaid, and at the prayer of his said Commons, did ordain and establish, That if any purchase or pursue, or cause to be purchased or pursued, in the Court of *Rome* or elsewhere, any such Translations, Proseses and Sentences of Excommunication, Bulls, Instruments, or any other things which touched the King their Lord, against him, his Crown and his Regalty, or his Realm, as is aforesaid, and they which bring them within the Realm, or them receive, or make thereof notification, or any other execution, within the same Realm or without, that they, their notorious procurators, maintainers, fautors and counsellors, should be put out of the King's protection, and their lands and tenements, goods and chattels forfeit to the King, and they be attached by their bodies,

bodies, if they may be found, and brought before the King and his Council, there to answer to the cases aforesaid; or that proceſſe be made against them by *Premunire facias*, as it is ordained in other Statutes of Provisors, and others which do sue in any other Court in derogation of the Regality of the King, as by the said Act also appeareth.

In the Reign of King Henry the Fourth.

IT is resolved that the Pope's Collector, though he have the Pope's Bulls for that purpose, hath no Jurisdiction within this Realm: and there the Archbishops and Bishops, &c. of this Realm are called the King's Spirituall Judges. 1 H. 4. fol. 9.

By the ancient Laws Ecclesiasticall of this Realm, no man could be convicted of Heresie, being high Treason against the Almighty, but by the Archbishop and all the Clergy of that Province, and after abjured thereupon, and after that newly convicted and condemned by the Clergy of that Province, in their general Council of Convocation: But the Statute 2 H. 4. cap. 15. doth give the Bishop in his Diocese power to condemn an Heretick. And before that Statute he could not be committed to the Secular power to be burnt, untill he had once abjured, and was again relapsed to that or some other Heresie. Whereby it appeareth that the King by consent of Parliament directed the proceedings in the Ecclesiasticall Court in case of Heresie, and other matters more spirituall. *This had a resemblance to an Attainder of Treason, wherein there must be first an Inditement by one Jury, and a Conviction by another.*

The Pope cannot alter the Laws of England. 11 H. 4. 37.

The Judges say, that the Statutes which restrain the Pope's Provisions to the Benefices of the Advowsons of Spiritual men were made, for that the Spirituality durst not in their just cause say against the Pope's Provisions: So as those Statutes were made but in affirmance of the Common Laws. 11 H. 4. fol. 69. 76.

Excommunication made by the Pope is of no fore in England, 14 H. 4. fol. 14. Vide 30 E. 3. lib. Ass.

pl. 19. before. *land*, and the same being certified by the Pope into any
Vide 13 E. 3. Certificate 6. Court in *England* ought not to be allowed; neither is any
Vide 20 H. 6. Certificate of any Excommunication available in law, but
 1. 37 H. 6. what is made by some Bishop of *England*: for the Bishops
 42. 7 E. 4. are by the Common Laws the immediate Officers and Mi-
 14. Fitz. Na. nisters of justice to the King's Courts in Causes Ecclesiasti-
 Br. 64. F. cal.

14 H. 4. 14. If any Bishop do excommunicate any person for a Cause
 that belongeth not unto him, the King may write unto
 the Bishop, and command him to assail and absolve the par-
 ty.

Statut. de If any person of Religion obtain of the Bishop of *Rome* to
 2 H. 4. cap. 3. be exempt from obedience Regular or ordinary, he is in case
 of *Premunire*, which is an offence, as hath been said, *contra*
Regem, Coronam & Dignitatem suam.

Statut. de The Commons did grievously complain to the King, at
 6 H. 4. cap. 1. the Parliament holden in the 6. year of H. 4. of the horrible
 mischiefs and damnable customes which then were intro-
 duct of new in the Court of *Rome*, that no person, Abbot or
 other, should have provision of any Archbishoprick or Bi-
 shoprick which should be void, till he had compounded
 with the Pope's Chamber, to pay great and excessive sums
 of money, as well for the First-fruits of the same Archbisho-
 prick or Bishoprick, as for the other lesse Services in the same
 Court; and that the same sums, or the greater part there-
 of, be paid beforehand; which sums passed the treble or
 the double at the least of that that was accustomed of old
 time to be paid in the said Chamber and otherwise by the
 occasions of such Provisions: whereby a great part of the
 Treasury of this Realm had been brought and carried to the
 said Court, and also should be in time to come, to the great
 impoverishing of the Archbishops and Bishops within the
 same Realm, and elsewhere within the King's dominions,
 if convenient remedy were not for the same provided.
 The King, to the honour of God, as well to eschew the dam-
 mage of this Realm, as the perils of their souls which owen
 to be advanced to any Archbishopricks and Bishopricks
 within the Realm of *England*, and elsewhere within the
 King's

King's dominions out of the same Realm, by the advice and assent of the Great men of his Realm in the Parliament, did ordain and establish, That they and every of them that should pay to the said Chamber or otherwise, for such Fruits and Services, greater sums of money then had been accustomed to be paid in old time past, they and every of them should incur the forfeiture of as much as they may forfeit towards the King, as by the said Act appeareth.

No person, Religious or Secular, of what estate or condition that he were, by colour of any Bulls containing privileges to be discharged of Tithes pertaining to Parishes, churches, Prebends, Hospitals, Vicarages, purchased before the first year of King *Richard* the 2. or after, and not executed, should put in execution any such Bulls so purchased, or any such Bulls to be purchased in time to come, upon the pain of a *Premunire*, as by the said Act appeareth. *Statut. de 7 H. 4. cap. 6.*

In the Reign of King Henry the Fifth.

IN an Act of Parliament made in the third year of King *H. 5.* it is declared, That whereas in the time of King *H. 4.* Father to the said King, in the 7. year of his Reign, to eschew many discords and debates, and divers other mischiefs, which were likely to arise and happen because of many Provisions then made, or to be made, by the Pope, and also of Licence thereupon granted by the said late King, amongst other things, it was ordained and established, That no such Licence or Pardon so granted before the same Ordinance, or afterwards to be granted, should be available to any Benefice full of any Incumbent at the day of the date of such Licence or Pardon granted; Nevertheless divers persons, having Provisions of the Pope of divers Benefices in *England* and elsewhere, and Licences Royall to execute the same Provisions, have, by colour of the same Provisions, Licences and Acceptations of the said Benefices, subtilly excluded divers persons of their Benefices, in which they had been Incumbents by a long season of the collation of the very Pa- *Statut. de 3 H. 5 cap. 4.*

trons Spiritual, to them duely made to their intent, to the final destruction and enervation of the states of the same Incumbents: The King, willing to void such mischiefs, hath ordained and established, That all the Incumbents of every Benefice of Holy Church, of the Patronage, Collation or Presentation of Spirituall Patrons, might quietly and peaceably enjoy their said Benefices, without being inquieted, molested, or any ways grieved, by any colour of such Provisions, Licences and Acceptations; And that all the Licences and Pardons upon and by such Provisions made in any manner should be void, and of no value; And if any feel himself grieved, molested, or inquieted, in any wise from thenceforth by any, by colour of such Provisions, Licences, Pardons, or Acceptations, that the same molesters, grievors

** Stat. de 2 H. 5. cap. 7. Lollardry & lollie: For as Cockle is the destruction of the Corn, so is Heresie the destruction of true Religion.*
or inquietors, and every of them, have and incur the pains and punishments contained in the Statutes of Provisors before that time made, as by the said Act appeareth.

** A Statute was made for extirpation of Heresie and Lollardry, whereby full power and authority was given to the Justices of Peace, and Justices of Assize, to inquire of those that hold Errours, Heresies or Lollardry, and of their maintainers, &c. And that the Sheriffs, &c. may arrest and apprehend them.*
Virgilius. Et caveant lolis oculos viriantibus agri.
Ovidius.

Statutum de 2 H. 5. cap. 1. The King, by consent of Parliament, giveth power to Ordinaries to enquire of the foundation, erection and governance of Hospitals, other then such as be of the King's foundation, and thereupon to make correction and reformation according to the Ecclesiasticall Law.

In the Reign of King Henry the Sixth.

8 H. 6. fol. 3. **E**Xcommunication made and certified by the Pope is of no force to disable any man within *England*: And this is by the ancient Common Laws, before any Statute was made concerning forrein Jurisdiction.

The

The King onely may grant or licence to found a Spiritu- 9 H. 6. fol. 16.
al Incorporation.

In the Reign of King Henry the 6. the Pope writ Letters 1 H. 7. fol. 10.
in derogation of the King and his Regalty, and the Church-
men durst not speak against them: But Humfrey Duke of
Gloucester, for their safe keeping, put them into the fire.

In the Reign of King Edward the Fourth.

IN the Reign of King Edward the Fourth the Pope gran- 1 H. 7. fol. 20.
ted to the Prior of *Saint Johns* to have Sanctuary with-
in his Priory; and this was pleaded and claimed by the Pri-
or: But it was resolved by the Judges, that the Pope had
no power to grant any Sanctuary within this Realm, and
therefore by judgement of the Law the same was disallow-
ed.

There it appeareth, that the opinion of the King's Bench 9 E. 4. 3.
had been oftentimes, that if one Spiritual person sue another Fitz. Na. Br.
Spiritual man in the Court of Rome for a matter spiritual, fol. 44. H. a.
where he might have remedy before his Ordinary, that is greeth here-
with.
the Bishop of that Diocese within the Realm, *quia trahit ip-
sum in placitum extra regnum*, incurreth the danger of a
Premunire, a hainous offence it being, *contra legiantie sue de-
bitum, in contemptum Domini Regis, & contra Coronam & digni-
tatem suam*. By which it appeareth how grievous an offence
it was against the King, his Crown and Dignity, if any sub-
ject, although both the persons and cause were Spirituall,
did seek for justice out of the Realm, as though either there
wanted Jurisdiction, or Justice was not executed in the Ec-
clesiasticall Courts within the same; which (as it hath been
said) was an high offence, *contra Regem, Coronam & digni-
tatem suam*.

Note.

In the King's Courts of Record, where Felonies are deter- 9 E. 4. : 8.
mined, the Bishop or his Deputy ought to give his atten-
dance, to the end that if any that is indicted and arraigned
for Felony do demand the benefit of his Clergy, that the Or-
dinary may inform the Court of his sufficiency or insuffici-

ency, that is, whether he can read as a Clerk or not; whereof notwithstanding the Ordinary is not to judge, but is a minister to the King's Court; and the Judges of that Court are to judge of the sufficiency or insufficiency of the party, whatsoever the Ordinary doth inform them, and upon due examination of the party, may give judgement against the Ordinarie's information: for the King's Judges are Judges of the cause.

12 R. 4. fo. 16. The Pope's Excommunication is of no force within the Realm of England.

In the Reign of King *Edward* the Fourth, a Legate from the Pope came to *Calice*, to have come into *England*; but the King and his Council would not suffer him to come within *England*, until he had taken an oath that he should attempt nothing against the King or his Crown: and so the like was done in his Reign to another of the Pope's Legates. And this is so reported in 1 *Henrici* 7. fol. 10.

In the Reign of King Richard the Third.

2 R. 3. fo. 22. IT is resolved by the Judges, That a Judgement or Excommunication in the Court of *Rome* should not bind or prejudice any man within *England* at the Common Law.

In the Reign of King Henry the Seventh.

1 H. 7. 10. IN the Reign of King *Henry* the 7. the Pope had excommunicated all such persons whatsoever as had bought *Alum* of the *Florentines*: And it was resolved by all the Judges of *England*, that the Pope's Excommunication ought not to be obeyed or to be put in execution within the Realm of *England*.

Statut. de 1
H. 7. cap. 4. In a Parliament holden in the first year of King *Henry* the Seventh, for the more sure and likely reformation of Priests, Clerks and Religious men, culpable or by their demerits openly

openly noised of incontinent living in their bodies, contrary to their Order, it was enacted, ordained and established, by the advice and assent of the Lords Spiritual and Temporal, and the Commons in the said Parliament assembled, and by authority of the same, That it be lawful to all Archbishops and Bishops, and other Ordinaries, having Episcopal Jurisdiction, to punish and chastise Priests, Clerks and Religious men, being within the bounds of their Jurisdiction, as shall be convicted afore them by examination, and lawfull proof requisite by the law of the Church, of Advoutrie, Fornication, Incest, or any other fleshly Incontinency, by committing them to ward and prison, there to abide for such time as shall be thought to their discretions convenient for the quality and quantity of their trespass: And that none of the said Archbishops, Bishops or Ordinaries aforesaid, be thereof chargeable, of, to, or upon any action of false or wrongfull imprisonment, but that they be utterly thereof discharged in any of the cases aforesaid, by virtue of this Act.

Rex est persona mixta, because he hath both Ecclesiasticall^{10 H.7.18.} and Temporal Jurisdiction.

By the Ecclesiasticall Laws allowed within this Realm,^{11 H.7.12.} a Priest cannot have two Benefices, nor can a Bastard be a Priest; but the King may, by his Ecclesiasticall power and Jurisdiction, dispense with both of these, because they be *mala prohibita*, and not *mala per se*.

In the Reign of King Henry the Eighth.

BY an Act of Parliament made in the 24. year of King Henry the 8. that is to say, by the King, 24 Bishops, 29 Abbots and Priors, for so many were then Lords of Parliament, by all the Lords Temporal and the Commons in that Parliament assembled, it is declared, That where by divers sundry old authentick Histories and Chronicles it was manifestly declared and expressed, that this Realm of England is an Empire, and so hath been accepted in the world,^{Statut. 24 H.8. cap. 12. This Statute is declaratorie of the ancient laws of England, as manifestly appears by that which hath been said.}

See Br. A.
bridgment,
tit. Present-
ment at Es-
glife pl. 12.
The Pope was
permitted to
doe certain
things with-
in this realm
by usurpation,
and not of
right, until
the reign of
H. 8.

world, governed by one Supreme Head and King, having the Dignity and Royal estate of the Imperial Crown of the same, unto whom a Body politicke compact of all sorts and degrees of people, divided in terms and by names of Spirituality and Temporality, been bound, and ought to bear, next to God, a natural and humble obedience; he being also institute and furnished by the goodness and furtherance of Almighty God with plenary, whole and entire Power, Preheminence, Authority, Prerogative and Jurisdiction, to render and yield Justice and final determination to all manner of folk resiants or subjects within this his Realm, in all causes, matters, debates and contentions happening to occur, insurge or begin within the limits thereof, without restraint or provocation to any forrein Princes or Potentates of the world: The Body Spiritual whereof having power, when any cause of the Law Divine happened to come in question, or of Spiritual learning, that it was declared, interpreted and shewed by that part of the said Body politicke, called the *Spirituality*, then being usually called the *English Church*, which alwaies had been reputed and also found of that sort, that both for knowledge, integrity, and sufficiency of number, it had been always thought, and was also at that hour sufficient and meet of it self, without the intermeddling of any exteriour person or persons, to declare and determine all such doubts, and to administer all such offices and duties as to the rank spiritual did appertain. For the due administration whereof, and to keep them from corruption and sinister affection, the King's most noble Progenitors, and the antecessors of the Nobles of this Realm, did sufficiently indow the said Church both with honour and possessions. And the Laws Temporal, for trial of property of lands and goods, and for the conservation of the people of this Realm in unity and peace, without ravine or spoil, was administered, adjudged and executed by sundry Judges and Ministers of the other part of the said Body politicke, called the *Temporality*. And both their Authorities and Jurisdictions did conjoyn together in the due administration of Justice, the one to help the other. And
whereas

whereas the King, his most noble Progenitors, and the Nobility and Commons of the said Realm, at divers and sundry Parliaments, as well in the time King *Edward* the 1. *Edward* the 3. *Richard* the 2. *Henry* the 4. and other noble Kings of this Realm, made sundry Ordinances, Laws, Statutes and Provisions, for the entire and sure conservation of the Prerogatives, Liberties and Preheminences of the said Imperial Crown of this Realm, and of the Jurisdiction Spiritual and Temporal of the same, to keep it from the annoiance as well of the See of *Rome*, as from the authority of other forrein Potentates, attempting the diminution or violation thereof, as often and from time to time as any such annoiance or attempt might be known or espied: And notwithstanding the said good Statutes and Ordinances, made in the time of the King's most noble Progenitors, in preservation of the Authority and Prerogative of the said Imperiall Crown, as is aforesaid; yet nevertheless sithence the making of the said good Statutes and Ordinances, divers and sundry inconveniences and dangers, not provided for plainly by the said former Acts, Statutes and Ordinances, have risen and sprung by reason of Appeals sued out of this Realm to the See of *Rome*, in causes Testamentary, causes of Matrimony and Divorces, right of Tithes, Oblations and Obventions, not onely to the great inquietation, vexation, trouble, costs and charges of the King's Highness and many of his subjects and residents in this his Realm, but also to the great delay and lett to the true and speedy determination of the said causes, forasmuch as the parties appealing to the said Court of *Rome* most commonly did the same for delay of Justice, and forasmuch as the great distance of way was so far out of this Realm, that neither the necessary proofs nor the true knowledge of the cause could be so well known, or the witnesses there so well examined, as within this Realm, so that the parties grieved by means of the said Appeals were most times without remedy: In consideration thereof, the King, his Nobles and Commons, considering the great enormities, dammages, long delaies and hurts, that as well to his Highness, as to his said Noble subjects,

*This also is
declaratory
of the ancient
Law, as it
appeareth
both by 9 E.
4.3. Fitz. Na.
B.44. and ma-
ny other cases
and statutes
abovesaid.*

subjects, Commons and residents of this his Realm, in the said causes Testamentary, causes of Matrimony and Divorces, Tithes, Oblations and Obventions, did daily ensue, did therefore by his Royall assent, and by the assent of the Lords Spiritual and Temporal, and the Commons in that Parliament assembled, and by Authority of the same, enact, establish and ordain, That all causes Testamentary, causes of Matrimony and Divorces, rights of Tithes, Oblations and Obventions, the knowledge whereof by the goodness of Princes of this Realm, and by the Laws and Customes of the same, appertained to the Spiritual Jurisdiction of this Realm, then already commenced, moved, depending, being, happening, or hereafter coming in contention, debate or question within this Realm, or within any of the King's dominions, or Marches of the same, or elsewhere, whether they concern the King, his Heirs or Successors, or any other subjects or residents within this Realm, of what degree soever they be, should be from thenceforth heard, examined, discussed, clearly, finally and definitively adjudged and determined, within the King's Jurisdiction and Authority, and not elsewhere, in such Courts Spiritual and Temporal of the same as the natures, conditions and qualities of the Cases and matters aforesaid in contention, or thereafter happening in contention, should require, without having any respect to any custome, use or sufferance in hinderance, lett or prejudice of the same, or to any other thing used or suffered to the contrary thereof, by any other manner person or persons in any manner of wise; any forrein Inhibitions, Appeals, Sentences, Summons, Citations, Suspensions, Interdictions, Excommunications, Restraints, Judgements, or any other Process or Impediment, of what natures, names, qualities or conditions soever they be, from the See of Rome, or any other forrein Courts or Potentates of the world, or from and out of this Realm, or any other the King's dominions, or Marches of the same, to the See of Rome, or to any other forrein Courts or Potentates, to the let or impediment thereof, in any wise notwithstanding, as by the said Act appeareth.

By

By an Act of Parliament in 25 H. 8. it is declared by the King, the Lords Spiritual and Temporal, and the Commons in that Parliament assembled, That neither the King, his Heirs nor Successors, Kings of this Realm, nor any his subjects of this Realm, nor of any other his dominions, should from thenceforth sue to the said Bishop of Rome, called *the Pope*, or to the See of Rome, or to any person or persons having or pretending any Authority by the same, for Licences, Dispensations, Impositions, Faculties, Grants, Rescripts, Delegacies, or any other Instruments or Writings, of what kind, name, nature or quality soever they be, for any cause or matter for the which any Licence, Dispensation, Composition, Faculty, Grant, Rescript, Delegacy, Instrument or other Writing, theretofore had been used and accustomed to be had and obtained at the See of Rome, or by authority thereof, or of any Prelat of this Realm; nor for any manner of other Licences, Dispensations, Compositions, Faculties, Grants, Rescripts, Delegacies, or any other Instruments or Writings, that in cases of necessity might lawfully be granted without offending of the Holy Scriptures and Laws of God: But that from thenceforth every such Licence, Dispensation, Composition, Faculty, Grant, Rescript, Delegacy, Instrument, and other Writing afore named and mentioned, necessary for the King, his Heirs and Successors, and his and their people and subjects, upon the due examination of the causes and qualities of the persons procuring such Dispensations, Licences, Compositions, Faculties, Grants, Rescripts, Delegacies, Instruments, or other Writings, should be granted, had and obtained from time to time within this his Realm, and other his dominions, and not elsewhere, in manner and form following, and not otherwise. That is to say, The Archbishop of *Canterbury* for the time being, and his Successors, should have power and authority from time to time by their discretions to give, grant and dispose by an Instrument under the Seal of the said Archbithop unto the King, and unto his Heirs and Successors Kings of this Realm, as well all manner of such Licences, Dispensations, Compositions, Faculties, Grants, Rescripts, Delegacies, Instruments,

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and

*Statut. de 25
H. 8. cap. 21.
This was also
declaratory of
the ancient
Law, as by
that which
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and all other Writings, for causes not being contrary or repugnant to the Holy Scriptures and Laws of God, as theretofore had been used and accustomed to be had and obtained by the King, or any his most noble Progenitors, or any of his or their subjects, from the See of Rome, or any person or persons by authority of the same; and all other Licences, Dispensations, Faculties, Compositions, Grants, Rescripts, Delegacies, Instruments, and other Writings, in, for and upon all such causes and matters, as should be convenient and necessary to be had for the honour and surety of the King, his Heirs and Successors, and the wealth and profit of this his Realm: so that the said Archbishop, or any his Successors, in no manner wise should grant any Dispensation, Licence, Rescript, or any other Writing before rehearsed, for any cause or matter repugnant to the Law of Almighty God, as by the said Act also appeareth. If it be demanded what Canons, Constitutions, Ordinances and Synodals provincial, are still in force within this Realm; I answer, that it is resolved and enacted by Authority of Parliament, That such as have been allowed by general consent and custome within the Realm, and are not contrariant or repugnant to the Laws, Statutes and Customes of this Realm, nor are to the damage or hurt of the King's Prerogative royal, are still in force within this Realm, as the King's Ecclesiastical Laws of the same. Now, as consent and custome hath allowed those Canons; so, no doubt, by general consent of the whole Realm any of the same may be corrected, enlarged, explained or abrogated. For example; There is a Decree that all Clerks that have received any manner of Orders, greater or smaller, should be exempt *pro causis criminalibus* before the Temporal Judges: This Decree had never any force within England. First, for that it was never approved and allowed of by general consent within the Realm. Secondly, it was against the Laws of the Realm, as it doth appear by infinite precedents. Thirdly, it was against the Prerogative and Sovereignty of the King, that any subject within this Realm should not be subject to the Laws of this Realm.

This appeareth by resolution of all the Judges in 7 H. 8. Lib. Keylw. fo. 181. And this was long before any Act of Parliament was made against foreign Jurisdiction by King Henry the 8.

In the Reign of Queen Elizabeth.

BY the said Act of Parliament (whereupon the principal case then in question partly dependeth) made in the first year of the Reign of Queen Elizabeth, it is declared, That where in the time of the Reign of King Henry the 8. divers good Laws and Statutes were made and established, as well for the utter extinguishment and putting away of all usurped and forrein powers and authorities out of this Realm, and other her dominions and countries, as also for the restoring and uniting to the Imperial Crown of this Realm the ancient Jurisdiction, Authorities, Superiorities and Preheminences to the same of right belonging and appertaining; by reason whereof her most humble subjects, from the 25. year of the said King Henry the 8. were continually kept in good order, and were disburthened of divers great and intolerable charges and vexations, before that time unlawfully taken and exacted by such forrein power and authority as before that was usurped; And to the intent that all usurped and forrein power and authority, Spirituall and Temporal, might for ever be clearly extinguished, and never be used or obeyed within this Realm, or any other her dominions or countries: It was by the Authority of that Parliament enacted, That no forrein Prince, person, Prelate, State or Potentate, Spiritual or Temporal, should at any time after the last day of that Session of Parliament use, enjoy or exercise any manner of Power, Jurisdiction, Superiority, Authority, Preheminence or Priviledge, Spiritual or Ecclesiasticall, within this Realm, or within any other the Queen's dominions or countries, that then were or hereafter should be, but from thenceforth the same should be clearly abolished out of this Realm, and all other her dominions for ever, any Statute, Ordinance, Customes, Constitutions, or any other matter or cause whatsoever, to the contrary in any wise notwithstanding. And it was then also established and enacted by the Authority of that Parliament, That such Jurisdiction

*The Statute of
1 Q. Eliz.*

ons, Priviledges, Superiorities and Preheminences Spiritual and Ecclesiastical, as by any Spiritual or Ecclesiastical power or authority had heretofore been, or might lawfully be, exercised or used for the visitation of the Ecclesiastical state and persons, and for reformation, order and correction of the same, and of all manner Errours, Heresies, Schisms, Abuses, Offences, Contempts and Enormities, should for ever by Authority of that Parliament be united and annexed to the Imperial Crown of this Realm: And that the Queen, her Heirs and Successors, Kings or Queens of this Realm, should have full power and authority by virtue of that Act, by Letters Patents under the great Seal of *England* to assign, name and authorize, when and as often as the Queen, her Heirs or Successors, should think meet and convenient, and for such and so long time as should please the Queen, her Heirs or Successors, such person or persons, being natural-born Subjects to the Queen, her Heirs or Successors, as the said Queen, her Heirs or Successors, should think meet, to exercise, use, occupy and execute, under the said Queen, her Heirs or Successors, all manner of Jurisdictions, Priviledges and Preheminences, in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdiction, within these Realms of *England* and *Ireland*, or any other her dominions and countries; and to visit, reform, redress, order, correct and amend all such Errours, Heresies, Schisms, Abuses, Offences, Contempts and Enormities whatsoever, which by any manner Spiritual or Ecclesiastical power, authority or jurisdiction, could or might lawfully be reformed, ordered, redressed, corrected, restrained or amended, to the pleasure of Almighty God, the encrease of vertue, and the conservation of the peace and the unity of this Realm: And that such person or persons so to be named, assigned, authorized and appointed by the said Queen, her Heirs or Successors, after the said Letters Patents to him or them made and delivered as is aforesaid, should have full power and authority, by virtue of that Act, and of the said Letters Patents, under the said Queen, her Heirs or Successors, to exercise, use and execute all the premisses, according to the tenour and effect of the said

said Letters Patents, any matter or cause to the contrary in any wise notwithstanding, as by the said Act also appeareth.

It was adjudged in the Court of Common Pleas by Sir *James Dyer, Welton*, and the whole Court, that a Dean or any other Ecclesiasticall person may resign to the Crown, as divers did to King *Edward* the 6. for that he had the Authority of the supreme Ordinary. 12 Eliz. Reg. Dyer.

From the 1. untill the 11. year of *Queen Elizabeth's* Reign, no person, of what perswasion of Christian Religion soever, at any time refused to come to the publick Divine Service celebrated in the Church of *England*, being evidently grounded upon the Sacred and infallible Word of Almighty God, and established by publick Authority within this Realm. But after the Bull of *Pius Quintus* was published against her Majesty, in the 11. year of her Reign, containing(amongst other things too long to be repeated for this purpose) these words, "*Pius* Bishop, Servant of God's servants, &c. She (*Queen Elizabeth*) hath clean put away
 "the Sacrifice of the Mass, Prayers, Fastings, Chöice or difference of meats, and Single life; She, possessing the Kingdome, and by usurping the place of the Supreme Head of the Church in all *England*, and the chief Authority and Jurisdiction of the same, hath again brought the said Realm into miserable destruction; Unto her all such as are the worst of the people resort, and are by her received into safe protection, &c. We make it known, that the said *Elizabeth*, and as many as stand on her side in the matter above named, have run into the danger of our Curse: We make it also known, that we have deprived her from that right she pretended to have in the Kingdome aforesaid, and also from all and every her Authority, Dignity and Priviledge: We charge and forbid all and every the Nobles, Subjects and people, and others aforesaid, that they be not so hardy as to obey her, or her Admonitions, Commandments or Laws, upon pain of the like accurse upon them: We pronounce that all whosoever by any occasion have taken their Oath unto her, are for ever discharged of such.

Psalm. 109.
28.
Though they curse, yet blest thou, O Lord, and let them be confounded that rise against me: but let thy servant rejoyce. Which was the prayer her Majesty made when this Bull was published against her.

"such their Oath, and also from all Fealty and Service" which was due to her by reason of her Government, &c. (as by the said Bull more at large appeareth) After this Bull, all they that depended on the Pope obeyed the Bull, disobeyed their gracious and natural Sovereign, and upon this occasion refused to come to the Church. The publishing of this Bull by a subject against his Sovereign (as appeareth by that which hath been oftentimes said) was Treason in the highest degree by the ancient Common Laws of *England*. For if it were Treason to publish a Bull of Excommunication within this Realm against a Subject thereof, as it was adjudged in the Reign of King *Edward* the 1. *a fortiori* it is Treason in the highest degree to publish such a Bull against the Sovereign and Monarch her self. After this Bull many Bulls of Absolution and Reconciliation to the Church of *Rome* were published and dispersed amongst her Majestie's subjects, to withdraw them from their natural Loyalty and Allegiance to their Sovereign; whereupon no small inconveniences (as hereafter appeareth) followed. And therefore at a Parliament holden in the 13. year of her Reign it was declared by the whole Body of the Realm, That divers seditious and very ill-disposed people, minding very seditiously and unnaturally, not onely to bring this Realm and the Imperial Crown thereof (being in very deed of it self most free) again into the thraldome and subjection of the forrein usurped and unlawful Jurisdiction, Preheminence and Authority, claimed by the said See of *Rome*, but also to estrange and alienate the minds and hearts of sundry the Queen's subjects from their dutiful Obedience, and to raise and stir Sedition and Rebellion within this Realm, did then lately procure and obtain to themselves, from the said Bishop of *Rome* and his said See, divers Bulls and Writings, the effect whereof had been, and then was, to absolve and reconcile all those that would be contented to forsake their due Obedience to the Queen, and to yield and subject themselves to the said feigned, unlawful and usurped Authority; and by colour of the said Bulls and Writings, the said persons very secretly and most seditiously, in such parts of this Realm where

*The Statute
of 13 Eliz.*

where the people for want of good instruction were most weak, simple and ignorant, and thereby farthest from the good understanding of their duties towards God and the Queen, did by their lewd and subtil practices and persuasions so far forth work, that sundry simple and ignorant persons had been contented to be reconciled to the said usurped Authority of the See of *Rome*, and to take Absolution at the hands of the said naughty and subtil practisers: whereby did grow great disobedience and boldness in many, not only to withdraw and absent themselves from all Divine Service, then most godly set forth and used within this Realm, but also to think themselves discharged of and from all Obedience, Duty and Allegiance to her Majesty; whereby most wicked and unnatural Rebellion did ensue, and, to the farther danger of this Realm, was thereafter very like to be renewed, if the ungodly and wicked attempts in that behalf were not by severity of Laws in time restrained and bridled. For remedy and redress whereof, and to prevent the great mischiefs and inconveniences that thereby might ensue, it was enacted by the Queen, with the assent of the Lords Spiritual and Temporal, and the Commons in that Parliament assembled, and by the Authority of the same, That if any person or persons, after the first day of *July* then next coming, should use or put in ure in any place within this Realm, or in any the Queen's dominions, any such Bull, Writing or Instrument, written or printed, of Absolution or Reconciliation, at any time theretofore obtained and gotten, or at any time thereafter to be obtained or gotten, from the said Bishop of *Rome*, or any his Successors, or from any other person or persons authorized or claiming authority by or from the said Bishop of *Rome*, his Predecessors or Successors, or the See of *Rome*; Or if any person or persons, after the said first day of *July*, should take upon him or them, by colour of any such Bull, Writing, Instrument or Authority, to absolve or reconcile any person or persons, or to grant or promise to any person or persons within this Realm, or any other the Queen's dominions, any such Absolution or Reconciliation, by any speech, preaching, teaching, writing, or any other

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open

3. open deed ; Or if any other person or persons within this Realm, or any the Queen's dominions, after the said first day of *July*, should willingly receive and take any such Absolution or Reconciliation ; Or else if any person or persons had obtained or gotten sithence the last day of the Parliament holden in the first year of her Reign, or after the said first day of *July* should obtain or get, from the said Bishop of *Rome*, or any his Successors, or the See of *Rome*, any manner of Bull, Writing or Instrument, written or printed, containing any thing, matter or cause whatsoever ; Or should publish, or by any waies or means put in ure, any such Bull, Writing or Instrument : That then all and every such act or acts, offence and offences, should be deemed and adjudged by the Authority of the said Act to be high Treason, and the Offendor and Offendors therein, their Procurors, Abettors and Counsellours to the fact, and committing of the said offence or offences, should be deemed and adjudged high Traitors to the Queen and the Realm ; and being thereof lawfully indicted and attainted, according to the course of the Laws of this Realm, should suffer pains of death, also lose and forfeit all their Lands, Tenements, Hereditaments, Goods and Chattels, as in cases of high Treason by the Laws of this Realm ought to be lost and forfeited, as by the said Act appeareth.

And albeit many of her subjects, after the said Bull of *Pius Quintus*, adhering to the Pope, did renounce their former Obedience to the Queen in respect of that Bull ; yet all this time no Law was either made or attempted against them for their Recusancy, though it were grounded upon so disloyal a Cause. Now that these speechless Bulls were declared by Act of Parliament to be so dangerous, then in place of them Jesuites and *Romish* Priests were sent over, who in secret corners whispered and infused into the hearts of many of the unlearned subjects of this Realm, that the Pope had power to excommunicate and depose Kings and Princes ; that he had excommunicated the Queen, deprived her of her Kingdome, and discharged all her subjects of their Oath, Duties, and Allegiance to her ; and therefore they ought not to obey

obey her, or any of her Commandments or Laws, under pain of the Pope's Curse. This was high Treason by the ancient Laws of *England*: And thereupon *Campion, Sherwin*, and many other *Romish* Priests, being apprehended, and confessing that they came into *England* to make a party for the Catholick cause when need should require, were in the 21. year of the said Queen's Reign, by the ancient Common Laws of *England*, indicted, arraigned, tried, adjudged and executed for high Treason against their natural Allegiance which they ought their liege Sovereign. But all this time there was no Act of Parliament made either against Recusants, or Jesuites, or Priests, her Majesty still desiring and expecting their conversion, and that by clemency and mildness they might be reclaimed to their former obedience and conformity before the said Bull. After Priests and Jesuites were punished by sentence of Law according to their demerits: then great numbers of slanderous and seditious Books (*libri falsidici*) against her Majesty and the State were dispersed and scattered within this Realm, tending to the inciting and stirring of the Subjects to Insurrection and Rebellion.

Her Majestie in open Parliament, having with the Lords Spiritual and Temporal, and Commons, mature consideration of so weighty and important causes, in the 23. year of her Reign made two severall Laws. One against the makers and publishers of Seditious Books, ordaining that offence to be Felony: another against Recusants, inflicting the penalty of twenty pounds the month for their Recusancie: and yet upon their submission according to the Act, to be thereof freely and absolutely discharged, (a milde and merciful Law, considering their former Conformity, and the cause of their Revolt.) But after these Jesuites and *Romish* Priests coming daily into and swarming within the Realm, instilling still this poison into the Subjects hearts, that by reason of the said Bull of *Pius Quintus* her Majesty was excommunicated, deprived of her Kingdom, & that her Subjects were discharged of all Obedience to her, and by all means endeavouring to withdraw them from their Duty and Allegiance to her Majesty, and to

*The Statute
of an. 23. Re-
gine Eliz.*

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The Statute of
an. 27 Eliz.
Reginae.

reconcile them to the Church of *Rome*; in the 27. year of her Reign, by Authority of Parliament, her Majesty made it Treason for any Jesuite or *Romish* Priest, being her natural-born Subject, and made a *Romish* Priest or Jesuite thence the beginning of her Reign, to come into any of her dominions; intending thereby to keep them out of the same, to the end that they should not infect any other Subjects with such treasonable and damnable persuasions and practices as are aforesaid, which without controversie were high Treason by the ancient Common Laws of *England*. Neither would ever magnanimous King of *England*, thence the first establishment of this Monarchy, have suffered any (especially being his own natural-born Subjects) to live, that perswaded his Subjects that he was no lawfull King, and practised with them (within the heart of this Realm) to withdraw them from their Allegiance and Loyalty to their Sovereign, the same being *crimen laesae Majestatis* by the ancient Laws of this Realm.

BY this and by all the Records of the Indictments it appeareth that these Jesuites and Priests are not condemned and executed for their Priesthood and Profession, but for their treasonable and damnable Perswasions, and Practices against the Crowns and Dignities of Monarchs and absolute Princes, who hold their Kingdoms and Dominions by lawfull Succession, and by inherent Birth-right and descent of inheritance, (according to the fundamental Laws of this Realm) immediately of Almighty God, and are not Tenants of their Kingdomes (as they would have it) at the will and pleasure of any forrein Potentate whatsoever.

Now albeit the proceedings and process in the Ecclesiastical Courts be in the name of the Bishops, &c. it followeth not therefore, that either the Court is not the King's, or the Law whereby they proceed is not the King's Law. For, taking one example for many, every Lect or View of Frankpledge holden by a Subject is kept in the Lord's name, and
y:c

yet it is the King's Court, and all the proceedings therein are directed by the King's Laws : and many subjects in *England* have and hold Courts of Record, and other Courts, and yet all their proceedings be according to the King's Laws and the Customs of the Realm.

Observe, (good Reader) seeing that the determination of Heresies, Schisms, and Errours in Religion, Ordering, Ex-amination, Admission, Institution and Deprivation of men of the Church, (which do concern God's true Religion and Service) of right of Matrimony, Divorces, and general Bastardy, (whereupon depend the strength of mens Dis-cents and Inheritances) of probate of Testaments, and letters of Administration, (without which no debt or dutie due to any dead man can be recovered by the Common Law) Mortuaries, Pensions, Procurations, Reparations of Churches, Simony, Incest, Adultery, Fornication and In-continency, and some others, doth not belong to the Com-mon Law, how necessary it was, for administration of Ju-stice, that his Majestie's Progenitors, Kings of this Realm, did by publick authority authorize Ecclesiasticall Courts un-der them, to determine those great and important Causes Ecclesiasticall (exempted from the Jurisdiction of the Com-mon Law) by the King's Laws Ecclesiasticall. Which was done originallly for two causes. 1. That Justice should be administred under the Kings of this Realm with-in their own Kingdome, to all their Subjects, and in all Causes. 2. That the Kings of *England* should be furnished upon all occasions, either forrein or domestical, with learn-ed Professors as well of the Ecclesiasticall as Temporall Laws.

THus hath it appeared, as well by the ancient Common Laws of this Realm, by the Resolutions and Judge-ments of the Judges and Sages of the Laws of *England* in all succession of ages, as by Authority of many Acts of Parlia-ment, ancient and of latter times, That the Kingdome of *England* is an absolute Monarchy, and that the King is the onely

only Supreme Governour, as well over Ecclesiasticall persons and in Ecclesiasticall causes, as Temporal, within this Realm; to the due observation of which Laws both the King and the Subject are sworn. I have herein cited the very words and texts of the Laws, Resolutions, Judgements, and Acts of Parliament, all publick and in print, without any inference, argument, or amplification; and have particularly quoted the books, years, leaves, chapters, and such like certain references, as every man may at his pleasure see and read the Authorities herein cited. This Case is reported in the English and Latine tongues, (as some other Writers of the Law have done,) to the end that my dear Countrymen may be acquainted with the Laws of this Realm, their own Birth-right and inheritance, and with such evidences as of right belong to the same: assuring my self that no wise or true-hearted *English-men*, that hath been perswaded before he was instructed, will refuse to be instructed in the truth, (which he may see with his own eyes) lest he should be dissuaded from error, wherewith blindfold he hath been deceived. For miserable is his case, and worthy of pity, that hath been perswaded before he was instructed, and now will refuse to be instructed, because he will not be perswaded.

FINIS.

Wm. Brouncker
Chancellor
The Works

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